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JOINT APPENDIX

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

No. 73-1933

UNITED STATES OF AMERICA,
Appellant,

v.

CITIZENS AND SOUTHERN NATIONAL BANK, et al.

On Appeal from the United States District Court for the Northern District of Georgia

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JURISDICTIONAL STATEMENT FILED JUNE 24, 1974

PROBABLE JURISDICTION NOTED OCTOBER 21, 1974

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INDEX

VOLUME I

	Page
Relevant Docket Entries	1
Complaint by the United States Filed November 2, 1971	9

Answer to Complaint Filed by the Defendants May 5, 1972 24

Transcript of Proceedings Held Before the Hon. Charles A. Moye, Jr., United States District Judge for the Northern District of Georgia Commencing September 25, 1972:

Appearances [2] 45

Testimony of W. D. Padgett—
Direct examination [7] 49
Cross-examination [74] 89

Testimony of William Farr, III—
Direct examination [85] 96
Cross-examination [123] 118

Testimony of Herbert Leonard Megar—
Direct examination [151] 135
Cross-examination [161] 142
Redirect examination [171] 148

Transcript of Proceedings Held Before the Hon. Charles A. Moye, Jr., United States District Judge for the Northern District of Georgia commencing September 26, 1972:

Testimony of James A. Parker—
Direct examination [180] 151
Cross-examination [227] 178
Redirect examination [245] 188

Testimony of Charles B. Ginden—
Direct examination [256] 195
Cross-examination [296] 219
Redirect examination [309] 226

Testimony of Warren Jackson—
Direct examination [312] 228
Cross-examination [352] 251

Transcript of Proceedings Held Before the Hon. Charles A. Moye, Jr., United States District Judge for the Northern District of Georgia commencing September 27, 1972:

Testimony of Warren Woolsey—
Direct examination [361] 257
Cross-examination [408] 284
Redirect examination [424] 292

Testimony of Samuel L. Skogstad—
Direct examination [425] 293
Cross-examination [426] 294
Redirect examination [476] 322
Recross-examination [494] 333

VOLUME II

Testimony of Mills B. Lane—
Direct examination [508] 343
Cross-examination [539] 361
Redirect examination [562] 374

Transcript of Proceedings Held Before the Hon. Charles A Moye, Jr., United States District Judge for the Northern District of Georgia commencing September 28, 1972:

Testimony of Howard S. Starks—
Direct examination [582] 386
Cross-examination [604] 400
Redirect examination [633] 417

Testimony of Joseph Hall—
Direct examination [637] 420
Cross-examination [683] 445
Redirect examination [744] 481

Testimony of Robert Daniel Handley, Jr.—
Direct examination [747] 483
Cross-examination [765] 494
Redirect examination [774] 499
Recross-examination [774] 500

Transcript of Proceedings Held Before the Hon. Charles A. Moye, Jr., United States District Judge for the Northern District of Georgia commencing September 29, 1972:

Testimony of Warren L. Berry—
Direct examination [777] 501
Cross-examination [784] 505
Redirect examination [802] 516

Testimony of Roy B. Holland—
Direct examination [802] 517
Cross-examination [805] 519

Testimony of Hubert Harris—
Direct examination [808] 521
Cross-examination [812] 523

Testimony of Lewis C. Beasley—
Direct examination [815] 524
Cross-examination [821] 528

Testimony of Joseph M. Ream—
Direct examination [824] 530

Testimony of Henry T. Collingsworth, Jr.—
Direct examination [830] 534
Cross-examination [837] 538

Testimony of Gordon B. Trulock, Jr.—
Direct examination [842] 542
Cross-examination [853] 548

Testimony of Ben C. Cook—
Direct examination [854] 548
Cross-examination [859] 552

Testimony of Merrill Autry, Jr.—
Direct examination [862] 554
Cross-examination [865] 555

Testimony of L. R. Gellerstedt, Jr.—
Direct examination [873] 559
Cross-examination [881] 564

Testimony of King Cleveland—
Direct examination [888] 569
Cross-examination [892] 571

Testimony of W. M. Jackson—
Direct examination [895] 573
Cross-examination [905] 579

Testimony of Evans Bruner—
Direct examination [932] 594
Cross-examination [940] 599

VOLUME III

Testimony of J. Mack Robinson—
Direct examination [942] 601
Cross-examination [946] 603

Testimony of Walter Eaves—
Direct examination [953] 607
Cross-examination [956] 609

Testimony of E. D. Dunn—
Direct examination [960] 611

Testimony of Nevins Dennis Baxter—
Direct examination [974] 619
Cross-examination [1004] 636

Depositions:

Warren Lanham Berry—
(GX-198) 671

Dr. William M. Cason—
(GX-199) 4.1-6.13 739

Gus Lockett Connelly—
(GX-200) 4-29.3; 53.13-54.22 741

Thomas E. Cook—
(GX-201) 4-26.4 760

Edward E. Elson—
(GX-202) 10.23-12.7 774

Louis J. Fortuna—
(GX-204) 19.6-22.3 775

Hubert L. Harris—
(GX-206) 4-28.7 778

T. Robert Hazelrig—
(GX-207) 4-28.13 793

Dr. W. Andrew Irvin—
(GX-208) 12.4-12.21; 18.10-18.24 811

Hugh F. Lane—
(GX-209) 812

Alva G. Maxwell—
(GX-211) 4-6.13 848

Dalton F. Scott—
(GX-215) 34.24-36.3 851

Economic Report (Excerpts):

Volume 1—[5-14]
[83-84]
[114 "E"-130 "B"]
[139-147] 852

Volume 2—Exhibits 20, 28, 29, 53, 54, 55, 69 877

Government Exhibits:

GX-33 B E-1
GX-33 C E-5
GX-33 D E-7
GX-33 E E-10
GX-35 ..... E-13
GX-36 ..... E-24
GX-37 ..... E-28
GX-38 ..... E-38
GX-104 ..... E-57
GX-105 ..... E-89
GX-106 A E-113
GX-107 ..... E-121
GX-108 ..... E-122
GX-109 ..... E-123
GX-110 ..... E-124
GX-111 ..... E-125
GX-112 ..... E-126
GX-113 ..... E-127
GX-114 ..... E-128
GX-115 ..... E-132
GX-116 ..... E-133
GX-117 ..... E-134
GX-118 ..... E-135
GX-119 ..... E-137
GX-120 ..... E-139

GX-121 ..... E-140
GX-122 ..... E-141
GX-123 ..... E-142
GX-124 ..... E-143
GX-125 ..... E-145
GX-126 ..... E-146
GX-127 ..... E-147
GX-128 ..... E-148
GX-134 ..... E-153
GX-136 ..... E-155
GX-138 ..... E-156
GX-139 ..... E-158
GX-140 ..... E-160
GX-142 ..... E-161
GX-148 ..... E-162
GX-151 ..... E-164
GX-153 ..... E-165
GX-162 ..... E-166
GX-163 ..... E-172
GX-164 ..... E-198
GX-166 ..... E-204
GX-169 ..... E-206
GX-170 ..... E-215
GX-177 [1-15.6] E-217
GX-177 B E-232
GX-177 D E-235

GX-188 ..... E-240
GX-189 ..... E-241
GX-190 ..... E-242
GX-191 ..... E-243
GX-192 ..... E-249
GX-193 [1-6, 8, 10, 12, 14, 16, 18, 20, 22, 24, 28] ... E-251
GX-194 ..... E-268
GX-216 ..... E-269

Defendants' Exhibits:

DX-94 ..... E-305
DX-113 ..... E-329
DX-125 ..... E-330
DX-152 ..... E-331
DX-266 ..... E-337
DX-267 ..... E-460
DX-268 ..... E-502-2
DX-269 (Sections A, D, F, K and V) E-572
DX-270—Vol. I, GOG 9.27 and GOG 9.6 ..... E-692
Vol. II, GOG 26.01 and 26.011 ..... E-699
DX-277 ..... E-703
DX-278 ..... E-705
DX-300 ..... E-706
DX-301 ..... E-835
DX-302 ..... E-840
DX-310 ..... E-860

DX-311 ..... E-1024
DX-313 ..... E-1717
DX-316 ..... E-1804
DX-317 ..... E-1816
DX-318 ..... E-1822
DX-320 ..... E-1826

Notice of Appeal filed March 25, 1973 ..... E-1841
Order Noting Probable Jurisdiction dated October 29, 1974 ..... E-1842

MILLS B. LANE,

being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Hodgson

Q. Would you tell the reporter you full name, please, sir? A. Mills B. Lane.

Q. Mr. Lane, what is your occupation today? A. I am vice-chairman of the Citizens & Southern National Bank.

Q. When did you become vice-chairman? A. July 8th, 1971.

Q. What was your position before that date? **[509]** A. I was president.

Q. And when did you become president? A. July 8th, 1946.

Q. What are your credentials, so far as the Citizens & Southern Holding Company is concerned? A. I am at present a director of the Holding Company. I was its president from '46 until Mr. Hall was made president, I think, in 1970.

[510] Q. Who is the current president of the Citizens and Southern Bank? A. Mr. Richard Kattel.

Q. And has been since July of 1970? A. '-1.

Q. When did you come to Atlanta with the Citizens and Southern Bank? A. October, 1939.

Q. At that time, Mr. Lane, what was the competitive posture of banking in the Atlanta area? A. Atlanta had three banks that were domiciled here. Two of them had—one or two of hem had banking in Decatur prior to the Banker Freeze of 1926. One had a branch in Buckhead which is also a grandfather bank. The C&S was a branch of Savannah with the competitors using that as heavily as they could, that they were just a branch of Savannah. We had two little branches, one on Mitch-

ell Street that is now a pawn shop, one at Tenth Street, that is now a nightclub. That was all we had with no opportunity for any increased facilities whatsoever.

Q. When did you become free to branch in Atlanta? A. We did not become free to branch in Atlanta through the C&S Banks until 1960.

Q. What did you do to expand in the meantime? A. We were fortunate in being able to acquire the **[511]** Bank of Atlanta which was a small bank, less than $7 million, as I remember, with an office out on Bankhead Highway, just at Peachtree and Marietta, Bankhead Highway, and Little Five Points. The bank was in serious trouble and we, I think part of the characteristics of our bank has been it's ability through its Board of Directors to give management the leeway to make decisions without having to hold multi-committee meetings.

Another bank in Atlanta was trying to purchase the Bank of Atlanta, but it's interesting that the Directors of that bank accepted a lower cash offer per share from us than they were willing to hang around and go through the Board of Directors from an upcoming bank. That gave us through the holding company a vehicle for taking banking to the people.

Q. In Atlanta? A. In Atlanta.

Q. Did you ever get into Buckhead? A. We were, in 1950, a small bank had been started in Buckhead. The owners of that bank decided they wanted to get out of the banking business. The owners of the bank were more friendly to a competitor bank than they were to us, but again, we had the vision, I guess, and the audacity, if you want to call it that, or foresight to make an offer for the bank with no strings **[512]** attached to it. Although, the ownership of the bank was non-friendly to C&S, they sold us the bank.

Q. What is the plan of improvement as an historic fact? A. The plan of improvement which, I think, went through two elections before it was adopted incorporated the Buckhead area

into the City of Atlanta. The interesting thing about that, when I came to Atlanta we had, the way I looked at it, three banking capitols, Five Points, Decatur Square and West End. There was groupings of banks in those areas. When the plan of improvement went through, instead of there just being an office of C&S Bank of Atlanta and a branch of the Fulton, every bank in Atlanta went out with more than one branch starting with Buckhead Village going up Peachtree Street, branching out up Roswell Road and the plan, what happened was that within a period of three years after all the banks went there, the total banking deposits and resources in Buckhead were over a hundred million dollars, and it had made Buckhead a fourth financial capitol.

At a period where housing and real estate development and construction lending, we didn't have the major developers like Tom Cousins, the smaller corporations, individuals like Red Gerrin and others, but this putting together a pool of capital with branch management that **[513]** have authority to do, I'm sure, led to the area development of Buckhead and it began to spread right out as a concentric circle north, which is, of course, we had the development of Chamblee-Dunwoody as a result of the war with the bell bomber plants there.

Q. Did this cause the spreading out of the city limits? A. It had to.

Q. As far as banking is concerned? A. As far as banking in the City of Atlanta, it's in the same fix as the corporate City of Atlanta is. We have the metropolitan area hemmed in by unofficial legal boundaries and yet in the banking business the same thing is true in government, that the City of Atlanta now provides all the policemen for the whole county. The small police force of Fulton County was inadequate. The same is true of banking. Atlanta, in the post war years, has become the major financial center of the entire southeast. It's both in national new business, of the reputation and character of the major banks of this town, has meant that the citizenry, both small and large, this town

brags about being big. One of the newspaper reporters said last week, I believe Atlanta believes its advertising. People want to do business with the big banks. We felt that way and that's what was needed and was necessary.

[514] Q. How did, if I may use the shorthand, your five percenter or correspondent's associate program come about? A. It came about when a group in Sandy Springs, where two banks, independent charters had been turned down by the State Banking Department. Jim Aldredge was a close friend. He was at that time, I think, Chairman of the County Commission. He had a building supply in Sandy Springs, and I'm sure that he had seen the, really, the renaissance of Buckhead as the result of being a financial capitol. What it had done. He came to me and said, "Sandy Springs is growing, it's the new section of town, it's going to, it needs banking, and I want to urge you to go take a look at Sandy Springs as it is, see what you think it is going to be in the future. We need a bank."

Q. What did you find? A. We found that Sandy Springs was indeed beginning to overflow. We had our bank at Buckhead, the people in Sandy Springs had to either come to Buckhead or go to Roswell to do any banking business at all and the convenience was absolutely a necessity. We saw that a bank would not only support them but would grow. The interesting thing about opening new branches is that you can put a bank in a location where there has never been a bank and **[515]** money seems to come up out of the ground. People that have never had a bank account before all of a sudden money comes out of shoeboxes or somewhere, I don't know.

But, you start a bank or a branch and resources begin to grow. We knew when looking at what had happened to Buckhead that obviously the City of Atlanta was either going to have to expand or certainly the banking laws in the State of Georgia were going to have to be changed.

Ever since I have been in the banking business there's been some action every year to try to do something to liberalize the

tight laws that hindered banking from taking business to the people.

Q. Taking business to the people? A. Yes, going where people are, just like the neighborhood theatres or anything else. People didn't want to come downtown, they wanted to bank, they wanted convenience, they wanted to have a friend in the bank, too. It was with the knowledge that either the banking laws were going to be changed or Sandy Springs would come into the city that we organized that bank. We picked up a group of people, some from Sandy Springs, some who were just friends of ours, new to C&S Bank, and organized the bank providing it with a manager, a president for whom we financed a considerable purchase of stock. We sold stock to our friends and in the area combining a degree of **[516]** ownership that tied it to the Citizens and Southern, but with a sufficiency of local interest to make this at one and the same time an integral part of Citizens and Southern, what it was doing as well as having a local flavor that's bragged about so much by independent banks.

[517] A. (Continued) At that time we didn't have the courage to give the bank the name Citizens & Southern, but we picked the closest thing to it, Citizens National Bank of Sandy Springs. And when we put the big sign up there, we featured C for Citizens, and S for Sandy Springs, and from a distance of a mile, you would think the sign was Citizens & Southern, and not the Citizens National of Sandy Springs.

Q. I presume the shareholders and directors didn't object to this? A. No, sir, I think we all enjoyed the fact that we came as close as Mr. Fortuna did of putting C&S up there as we could at that time.

Q. What understanding was there, if any, with respect to the Citizens & Southern Bank and Holding Company furnishing management to lead this bank? A. Have to give me that again.

Q. What understanding was there, if any? A. Oh, we irrevocably said that we would provide the management, the direction and the supervision of the bank. After all, the directors of the bank had never been directors for any bank before. It was not a business they knew. They had value; they knew the bank was going to need a gentleman like Aldredge in helping direct business to the bank, in giving a new president local knowledge about credit and people doing **[518]** business with it, but it was a learning process for directors of a bank. It is a right interesting thing that when you organize a brand new bank, the directors have a feeling of pride and interest that is amazing. They want to learn; they want to help build the bank. When a bank has been in business fifty years, the directors pay very little attention to it, I am afraid. But, directors of a new bank have burning desire to see it succeed.

Q. Did you furnish this management? A. Yes, we did.

Q. At Sandy Springs? A. Yes, we did.

Q. Who did you furnish? A. We supplied a young man by the name of Tom Cook, whose father was a banker in Cochran, Georgia, and whose brother was working for his father, and the young man had worked for us here in Atlanta for several years.

Q. Did Mr. Cook remain president of that bank to date? A. No, he did not. Mr. Cook, unfortunately, did not have good credit judgment. We, ourselves, this being the first bank we had a five-percent interest in, did not have a director on the board, other than from **[519]** our law firm. We did not have the techniques of branch supervision that we have now, with a result that with a board of directors that were not really knowledgeable, we woke up one day, the supervising authorities, and found that the bank was in serious trouble.

Q. What did you do? A. We promptly saw that—recommended to the board that Mr. Cook be relieved, and recommended Mr. Lou Fortuna, a Dartmouth graduate, a man who

had both real estate lending and installment lending in the C&S Bank, as well as having helped collect bad loans several times, while a Yale man doesn't like to stomach a Dartmouth graduate, they, having beaten our team while I was in college, Lou Fortuna was elected to be president and has been president ever since.

Q. The board elected him? A. Yes.

Q. Did the board look anywhere else for a president? A. No, sir.

Q. Did the board expect you to find a president and produce him? A. Yes, sir. And to show you the extent of our feeling that this was a C&S Bank, we promptly bolstered the bank's capital by the purchase of $100,000 worth of **[520]** capital notes.

Q. Were the regulatory agencies aware of the relationship that was formed here between yourself and the Citizens & Southern Sandy Springs bank? A. I feel absolutely positive that, two charters having been declined by independent groups, that only the name Citizens & Southern, our participation in the bank, the knowledge of our style of banking, made possible the granting of a charter in the first place.

Q. Was this a national association charter? A. Yes, sir.

Q. So, from that you are testifying that, at least, the office of the controller of the currency and his then chief national bank examiner were aware of it? A. I am sure that the State Banking Department was aware of it, too, because all applications for banks are circulated among all supervisory agencies.

Q. Would you say you exercised any influence over the management and policies of this bank or not? A. You talking about the Citizens & Southern National Bank or me, individually?

Q. The Citizens & Southern National Bank and Holding Company. A. As though it were a branch office.

Q. Did you so influence it as to tell the board **[521]** members exactly how to vote? A. No, sir.

Q. Well, then, how do you equate those two? How do you reconcile them when you say that you treated them like a branch but they made the decisions? A. They had their legal responsibilities, which they have very great feeling in. They were looking to us for guidance, advice and suggestions upon which to act. Certainly the past history of Citizens & Southern, since its beginning, had demonstrated both in depression years and in good years, the style that had been developed, that it was deemed toward helping other people before you help yourself, and that led them, I am sure, to looking to us for advice and guidance which, in the past, have been sound. They had seen us replace a president who did not measure up. They looked to us for that, but as far as legal control is concerned, no.

Q. Moving, Mr. Lane, if we may, to Chamblee, what was it like out there in 1960? A. Chamblee was a strip city, we call it, with the railroad on one side and a group of stores and offices on the other, and a little bit on the other side of the railroad tracks. But Chamblee was in an area that was industrialized with the building after the war of the Chamblee-Dunwoody whole industrial **[522]** development, which, in turn, had been brought about because of the building of the BPO Automobile Plant and the opening up of Peachtree Boulevard. And it was in, I would say, just a lag of a year or so, you go from Buckhead to Sandy Springs to Chamblee. It is nothing but an ever-widening circle of economy of metropolitan Atlanta.

Q. To the extent, recognizing the fact that you were then the chief executive officer of the National Bank and of the Holding Company, and not, therefore, always involved in each of the details of these, to the extent that you participated and have personal knowledge, Mr. Lane, please tell the Court how this bank got started, the Citizens &—the bank that is now the Citizens & Southern Chamblee Bank. A. The business people

of Chamblee, two senior citizens, Mr. Frank Berry, and then Mrs. Miller, who is now Mrs. Berry, together with a doctor and other people, were meeting together talking about the organization of a bank. Mr. Berry, like Mr. Aldredge and others in Buckhead, was in the real estate business. He saw what had happened, I am sure, in Buckhead and in Sandy Springs, that there was no convenient place for people to bank in the first place, but, second, that if you had a bank with capital and deposits and with adequate **[523]** management tied to downtown Atlanta, that it would be the greatest single asset that Chamblee could have.

When I heard about that, I got in touch either with Dr. Mosher or with Mr. Berry, and I believe that I said, "Look, you people want to start a bank. We are a retail bank; we know more about branch supervision of big banks and small banks than anybody else. We are not blue stocking; would you let me have an opportunity to meet with you and tell you what I think the Citizens & Southern can mean to you, who will organize it for the bank itself, for its management and for the future of the community."

And they were kind enough to let me have them out for supper or lunch at Peachtree Golf Club, and later we used to meet at the dog and cat hospital. And out of that came a bond of friendship and understanding that led to their saying we would rather join hands than anybody we know in the banking business, because we like your style; we like you as an individual; we like what your bank has stood for, and you can do more for this community than anybody else.

Q. In each of these two cases, did you participate in the selection of people who would organize and then be directors of the banks? A. I did, but the selection of the directors in **[524]** this case was the work of the organizing group that let us join hands with them. We did supply the president and key personnel to the bank, although Mrs. Miller, who became an officer of the bank herself, again, did the same thing that hap-

pened in Buckhead and Chamblee, in Sandy Springs, tying together the capacity and knowledge of a big bank with local interest and feeling for the community. That combination is what has spelled success.

Q. Did the people at Chamblee have the same expectation with respect to management that you have testified about with respect to Sandy Springs? A. Yes. And I would think that they would not have participated or asked us to share in the organization of the bank if that hadn't been a requirement.

Q. In each of these instances, was there any expectation—well, let me come back and ask a prior question.

You testified a little earlier, Mr. Lane, that unless the city limits expanded or the branch-banking laws were liberalized—— A. Right.

Q. ——there was no way to go directly out into these areas either by branching or by holding company expansion? **[525]** A. Absolutely.

Q. Were the city limits ever expanded? A. Not since the plan of improvement that I know of.

Q. And were the branch banking laws liberalized? A. Yes, they were.

Q. When? A. 1960—no, 19—countywide branch banking was passed in the legislature in 1971 to become effective a year later, in '72.

Q. If I may, Your Honor, I believe it was one year prior to that, the law was a '70 law, effective January 1, '71. A. Right.

Q. After the F.D.I.C. took a while with the application, remember? A. Right.

Q. Now, with respect to each of these two banks, was there or not any expectation that should either the city limits expand

or the branch-banking laws be liberalized so as to allow these separate banks to become branches? A. I believe——

Q. That such would take place? A. I believe that in both cases the presumption **[526]** at the time of organization was that if there ever became an opportunity to put these two banks together, it would be done.

[527] Q. Now, Mr. Lane, though the Citizens and Southern Bank at Tucker is not a part of this litigation with respect to merging, it nevertheless is a part of the whole litigation and I'd like for you to tell the Court what it was like out in Tucker in 1965 when we first went in there. A. In 1965, Tucker was a totally undeveloped little patch with a railroad running through it and the old Lawrenceville Highway connecting up with Lilburn and a spur road that went over Stone Mountain. The only industrial plant of any consequence was a small operation by DuPont. The Cofer family dominated Tucker and had for many years in the real estate, mercantile business and a very large building supply business.

The Cofers, when Tucker was very small, had organized a bank partly for the convenience of the people but more pertinently to be able to finance the homes and construction as an adjunct to the building trade business. The bank was in a building not as large as this courtroom. They had no male employee except Mr. Cofer, who had a little office in the back and he would go over in the afternoon in the back and do a little bit of business.

Mr. Cofer and I got to be very close friends. He moved his correspondent relationship from another bank to ours and he came to me and says, "I am old, I don't **[528]** understand modern banking, I haven't got a man in this bank. My sons are in the mercantile business. I've watched what you all have done, you all would be good for this community. I'd like to make an offer to you and your friends to buy a majority of our interest in this bank and to provide management and new life to it." And that was done.

And here was the beginning of the real meaning of the five percenter bank. Charlie Thwaite, then president of Georgia Bank or Georgia Bank hearing over here at the capitol, had chided me that he thought we were wrong putting a five percent in a bank that other people owned ninety-five percent of and yet being its sponsor and its father with five percent ownership. We were going to be responsible for a hundred percent assets of the bank. And Sandy Springs—Mr. Thwaite proved out to be correct because we did not only have to, but wanted to back up one hundred percent of deposits liabilities of that bank. Mr. Cofer, the first thing he wanted to do was build a new building. We made him chairman of the building committee. We found it was going to cost $1,700 for a sign and he called me up and said the building committee isn't going to approve this sign unless you put C&S's name on it. I said, well, if you want to. He said, we want representation in this community, and I said, what you want is what **[529]** I want. And that was the beginning of the use of the name of Citizens & Southern which led to the changing of the name of the other five percenter banks not only in Atlanta but around the State of Georgia as well.

Q. Mr. Lane, why would you give your name which we lawyers represent holding out of your goodwill and take only five percent of a voting share of a bank and still be a hundred percent responsible, as you put it? A. We don't mind accepting responsibility of the banking business because our belief is—this goes back to the beginning of this bank—that you have got to serve people, you've got to serve them right. Obviously something was going to change in the banking laws of the state someday, they had to either by liberalizing the holding company or branch banking. We knew that if we gave it our name now that it would be our name then. Then we would have, not at that time the claim, but we would have built the bank in the beginning for what it was going to be in the future.

Q. You said a while ago that you were taking a substantial percentage of the stock in Tucker, but that the holding company

had only five percent. What happened to the rest of it? A. It was divided mainly among officers, their wives, and close friends of the Citizens and Southern.

[530] Q. Why was this done? A. To insure that the ownership would be in friendly hands for the future and for the purpose of helping some people make some money.

Q. Did you have any control over those voting shares? A. Not one iota, or in the buying or selling stock after the original placement either.

Q. Did you personally have anything to do with the beginning of Park National, Citizens and Southern Park National out at Executive Park? A. Yes, that was again a major development in the economy of Atlanta. That was the first office park building with major companies, national companies moving from downtown to the periphery of the city, and it seemed obvious that that was going to be a continuing trend throughout metropolitan Atlanta. It had been brought on by the expressway system and then by the circumferential highway and we wanted to be in Executive Park for that reason.

From there on I had little to do with the selection of management. But, other than set the pace that this was a long-range objective and the first step, this was the first time that a major company, Sinclair, moved from Fulton National Bank Building downtown to **[531]** Executive Park as its prime tenant and we were its prime bank.

Q. What is your recollection of your participation in the formation of Citizens and Southern North Fulton Bank out at Roswell? A. I had practically nothing to do with that. By then we had, had permission to merge our bank at Belvedere. It seemed obvious that the trend among banks was for liberalization of branch banking that was to come, that we were then embarked on meeting the competition of other banks. By then the First National Bank of Atlanta had gotten friends of theirs

to organize a bank not far from the Citizens and Southern South DeKalb.

Q. North Fulton? A. Roswell, now. I got the wrong one. I thought you were back down—I was down at the wrong place. Roswell had always interested me because of the presence of our director, Mr. William D. Ellis, who had had a mill out there. There was a bank there owned by Mr. Simms Garrett, who also owned a bank at Alpharetta. Mr. Garrett had been in bad health. He was active in politics. He did not live, I don't believe, in Roswell, and he approached me asking me if I would like to purchase the bank at Roswell and Alpharetta, and we came to an agreement to under which he would sell Citizens and Southern five **[532]** percent and I was to place the rest. That was in the form of a written contract. When the time came to deliver, Mr. Simms Garrett wanted to renegotiate the terms of the contract. I refused to do that. The Superintendent of Banks begged me to. He said Mr. Garrett was sick, he ought to be out of the banking business. Roswell needed a Citizens and Southern, Alpharetta needed a Citizens and Southern. He urged me to renegotiate the contract with Mr. Garrett, which I refused to do.

Subsequent to that, Mr. Garrett sold the bank to someone else and in the same vein that we had gone from Sandy Springs to Chamblee, we applied for a charter with friends for a new bank in Roswell which has again shown that when you start a new bank, competition doesn't hurt.

Simms Garrett's bank has grown, the Bank of North Fulton is now about a $7 million bank, plus. It has grown, it was probably unusual that the bank at Roswell was in the black within six months.

Q. Now, tell us about South DeKalb. A. Well, you want me to repeat it all?

Q. You can pick up where you left off, for better or not. A. I must be getting senile, I can't remember. But, I turned over to

Dan Handley, who was then the **[533]** aggressive vice president in charge of branches and five percent banks, and left it entirely up to him, as I have since the change in branch banking laws, the location of all new branch locations. From there on out, I had nothing further to do with South DeKalb.

Q. Are you familiar with the fact that the Government's assertion in this complaint that these are not Citizens and Southern Banks, do you differ with that view? A. They're as much Citizen and Southern Banks in every way, with only one exception. We only have a five percent degree of ownership.

Q. And this is true from the beginning as to each of them? A. Yes.

Q. I suppose then you would resist the Government's assertion that they were vigorous and significant competition to the Citizens and Southern National Bank Emory and East Point? A. There is no competition between the two. As a matter of fact, as Sandy Springs, Roswell came into being we urged customers of C&S to move for convenience to those banks, including major national corporations.

Q. Have you had any experiences that you can advise the Court of which would lead you to believe that **[534]** competitors feel that they are not C&S Banks or are Citizens and Southern Banks, these five? A. I feel positive that as far as competitors are concerned that they consider themselves absolutely the Citizens and Southern National Bank, and I'm sure if this case hadn't properly displayed it, they couldn't identify which ones were the five percent banks.

[534-A] Q. Mr. Lane, there is a bank that has been talked about in this litigation, which was the Stone Mountain Bank, and later the Citizens & Southern Bank at Stone Mountain, and now I believe it is the Citizens Bank of DeKalb. How do you compare that bank with these five, and its relationship and their relationships to the Citizens & Southern National Bank? A. Let's go back to the organization of the Stone Mountain

Bank. I had developed, since I was twelve years old and my father took me out to see Gutson Paulson working on the mountain, a love for that rock. And I undertook, over a period of several years, to get the Venable family together. Nobody had ever been able to do it, and finally the Venables incorporated the mountain, put it in a voting trust, made me the sole voting trustee, and from that, although we didn't—weren't able to develop it as a private thing, later sold it to the State. The love of that mountain and the city of Stone Mountain was such that I became very friendly with lots of the leading citizens of Stone Mountain. There was a rapport between us because of what we had done for the rock. Stone Mountain had once had a bank that went broke; it went broke because the character of the people in Stone Mountain is as different as day and night from any other part of the state of **[535]** Georgia. It was founded by Scotchmen and Welshmen who were stone cutters.

The bank failed because individual credit in the city of Stone Mountain had never been any good. Nobody had any confidence in it, and yet the little merchants said, "We need a bank." And I met with them at the Plantation House, gave every one of them a brand new, sparkling Stone Mountain half-dollar, and from that came the organization of the bank at Stone Mountain. We had not gotten into the philosophy of the five-percent bank at that time; otherwise, it would have been organized, I think, in the same spirit that Chamblee, Sandy Springs and others were. They wanted an independent bank, and the five-percent interest had never occurred to me, but I said, "Look, we can't give you men out of the C&S Bank, but here is Arthur Drew, who is retired as an assistant cashier, and Arthur wants something to do. Maybe Arthur Drew would be interested in coming out here and buying a little bit of stock and being head of the bank. So this bank started with an entirely different embryonic stage. The character of the people of Stone Mountain, provincial. Stone Mountain was a sleepy little place. I don't think to this day it has been able to attract a chain grocery store, although they have had me working for

several years to try to **[536]** get them a Winn-Dixie. It is a little pocket of between Decatur, Lithonia, with a sense of pride that is unusual.

At the time the bank was operated, one of the problems of developing the mountain was that the entire sewage system of Stone Mountain was an open cesspool. On the property that we had bought for the state park, it had no sewage system. It did not look like anything that was—other than as an adjunct to the development of Stone Mountain as a park, and the desire of a few people to have a bank, that it ever came into being. I have been amazed that it, too, developed deposits and profitability. The only similarity between this and the five-percent bank was that because we did not have an interest in the bank financially, did not have a member of the board of directors, did not really have a qualified president, the bank got in trouble. It got into serious credit trouble, and though we didn't have an interest in it, not five cents, when they got in trouble, because I had helped them organize it and kept them coming, I said, listen, we have got to get rid of Mr. Drew; we have got to have a president. All right, we can do it under these circumstances. We can either own five percent of the bank, so personnel can flow back and forth, and **[537]** you can occupy the same status, and that is what took place. We provided them with two men, Mr. Angus Parker, who was here, and Mr. Robert Maughon, who is now president of the bank.

Q. Previously you supplied Mr. Gibson, did you not? A. Mr. Gibson before that, too.

Q. How would you compare the relationship of the voluntary control, as we have called it, between those board members and officers and those of the other five banks and your bank? A. Now, give me that again.

Q. How do you compare the relationship of trust in asking for control and relying on it, as between those various boards of directors and yourself? A. I still don't understand.

Q. Well, let me go back, Mr. Lane, to your testimony about the dependence for expert advice that you testified about with respect to Chamblee. A. All right.

Q. And Sandy Springs. What was the relationship at Stone Mountain? Was it the same? A. Oh, no, entirely different.

Q. How do you compare them? A. Different as day and night. There is no **[538]** comparison. The only reason I think that the Stone Mountain directors were willing to let us own five percent was that is the only way they could get a C&S bank man that wanted to come out and run it. But they wanted to tell him what to do.

Q. And did so? A. Oh, yes.

Q. Consistently? A. Oh, yes, elected a chairman of the board without even telling us they were going to do it.

Q. Any other instances that you can, yourself, recall evidencing this mistrust? A. Probably only one, and I don't know that it is pertinent. We had suggested to the Keeper of the House that Mr. Hugh Jordan, a legislator in the General Assembly, be put on the bank's study commission for changes in the bank-branching law, and he was one of the few that voted in the committee against any liberalization of branch banking.

Q. Who was the dominant shareholder group at that bank? A. The McCurdy family.

Q. Did any of your employees or officers or shareholders, so far as you know, other than the Holding Company, own shares of stock in that bank, or friends? **[539]** A. I think that I may have owned fifty or sixty shares that came about a good deal after the organization of the bank. I am not sure how I got that little dab of stock. The only person connected with the C&S Bank that had any shares, Mr. Drew, owned five hundred, and he was already retired from the C&S Bank at this time.

Q. I suspect, Mr. Lane, with respect to any of these five things that we have been talking about, the shareholders or the

board members could walk away from the C&S Bank and Holding Company's name any time they wanted to, couldn't they? A. Yes, sir.

Q. In your view, what is the likelihood of this happening? A. I can't possibly conceive of it.

Mr. Hodgson: He is your witness, Mr. Kinkaid.

Mr. Kinkaid: Can we take a break, Your Honor?

The Court: All right. We will take a ten-minute recess.

(Whereupon a recess was had.)

Cross-Examination

By Mr. Kinkaid

[540] Q. Mr. Lane, basically, I would like just to see if we can sort of clarify a few points on which I am a little bit confused here. A. Certainly.

Q. As I recall, you indicated that there was some intent with respect to the sign that was used for the Sandy Springs bank to, I think as you pointed out, stress the C from Citizens and the S from Sandy Springs. I was wondering, was that reference made to the time when the Sandy Springs bank moved into its new building out there on Roswell Road? A. Yes, yes.

Q. You weren't at that point referring to the early days of Sandy Springs? A. No, no, when they moved into the new office building.

Q. All right, sir. In the early days before Sandy Springs was formed, I got the impression from what you said that Jim Aldredge came to see you alone; am I correct in that? I had always thought that there was a group of people out in the Sandy Springs area, including Mr. Aldredge, who were interested in forming a bank and came to you seeking assistance. A. My memory is not clear on that. Jim Aldredge is the only one I remember.

[541] Q. There may well have been other people? A. There may well have been.

[542] Q. It may not be, you may not be able to completely remember then whether, when you said you picked the group, I can't remember your exact words with respect to the organization of Sandy Springs. I think you said something like, "We picked a group, provided management, sold some stock to friends." When you said we picked a group, what did you have in mind there? A. I had in mind that we had invited Mr. Ivan Allen, Jr., Mr. Lawrence Gellerstedt, Mr. Weinberg, all associated with our C&S Bank and friends to become founding directors. That is the group I refer to.

Q. When you say "we" there, would that be Mr. Aldredge and anyone else from the organization group that came to you, if you can recall? A. I really can't recall the logistics of it.

Q. I realize it's been a long time, I don't want to quibble with words thirteen years after the event. I have a little bit of problem with the statements you made that we provided management. Wouldn't it be more correct to say that you suggested to the directors at Sandy Springs, experienced officers that were to run the bank; wouldn't that be more correct than saying we provided management? A. I believe that you can use it both ways. We suggest the man to run it, when we are providing management **[543]** we are talking about all the back-up services, installment loan and all, management assistance.

Q. When you said management, I thought you mean the man that's representing management. A. No, we suggested the man we would like for them to look at to be for president. That has been true for all banks, all affiliates. Whenever a new man comes in, even in a branch city, we have never told an advisory board or bank that we, this is the man we want you to take, here's the man that we want you to look at.

Q. And whether or not that man actually becomes the president is up to the Board of Directors? A. Yes, sir.

Q. You mentioned a situation that developed with respect to Mr. Cook of credit judgment out of Sandy Springs. I believe you indicated that there came a time when you recommended to the Board that Mr. Cook leave and that Mr. Fortuna take his place. Do I recall you correctly? A. Yes, I think I'd better give you a little additional explanation of that. We did not have a Citizens and Southern man as a director of the bank at that time. The bad situation came to light as a result of routine bank examination and I recall that I recommended to Mr. Weinberg and the directors that Tommy Cook had not performed, and that I thought he ought to be replaced. They **[544]** didn't want to do it at first. They were very loyal to him. And it seems to me it was over a period of a month or longer or perhaps three months before I persuaded them that they ought to let Tom Cook go. They were very reluctant to do so.

Q. Well, doesn't the fact that there was no C&S man on the Board at Sandy Springs, and I believe that you also mentioned the branch supervision wasn't keeping an eye on Sandy Springs at that time, doesn't that indicate to you that up to that point in time there was a significant difference between the Sandy Springs Bank and C&S five percent picture that you have painted for yourself as to the five percent bank today? A. Not Tom Cook because of this case we did pick the majority of the Board of Directors from people intimately associated with the Citizens and Southern Bank, including a member of our law firm. Only in credit judgment were we lacking in things we had done for this five percent bank. Everything else, mechanics, bookkeeping, machinery to run the bank, only in credit review were we shortcoming at Sandy Springs.

Q. Wasn't it true that in the organizational stage of Sandy Springs that the original small group of organizers in turn

went out and picked the rest of the directors themselves? Can you recall back thirteen years **[545]** ago on that? A. I believe that they were responsible for the selection of local directors without concurrence back and forth on either one of the two slates that we had. But after the original get together, Tom Cook, Mr. Aldredge and the rest of them put the bank together, the mechanics of it.

Q. I believe you mentioned that Citizens and Southern treated Sandy Springs like a branch, but the Board had legal responsibilities? Again, I apologize for not being able to quote your exact words. A. That's about it.

Q. Is that about it? Fine. What were the legal responsibilities that you had in mind in that stage? A. I don't think I want to be specific on that, but it would be the legal responsibility that any director has by law that is expected from a supervisory authority.

Q. Now, would that include the responsibility to make basic policy decisions for the bank? A. Yes, sir.

Q. I think you also indicated with respect to Sandy Springs, and this may have been true for the other thing, I think you also said this for Chamblee, basically, the directors at Sandy Springs were looking for Citizens and Southern advice and guidance. This, you indicated, was **[546]** an essential part of the relationship between Sandy Springs at that time and your bank; am I remembering you correctly in that regard? A. Yes. Let me get back a minute to the question of the broad decision of policy. Policy decision in any Citizens and Southern affiliate or five percenter is a matter of mutual confidence between one another and agreement. The actual physical carrying out in legal form by resolution and official action is done by the Board, the leading up to that in broad policy or other things. The second question is a matter not of supervision but of cooperative work in trust and confidence we have with one another, both at the directors' level and management level.

Q. Does that mean that basically the policies of one of these five percent banks is determined as a result of consultation between the management and directors of the five percent banks and the people representing the Citizens and Southern National? A. And the actual president of that bank, too?

Q. Yes, include him in it. Would that—would that procedure apply to all decisions of the five percent banks? A. I am not and have not been for quite a number of years in the daily management and relationship between **[547]** any of the five percent banks beyond the point of organization and policy that we try to give for the bank as a whole. I can't really answer that one specifically for you. I would if I could.

Q. From your standpoint, more or less in terms of what you were looking for? A. Right.

Q. At the time of organization, were you intending or expecting that that type of concurrence would take place with respect to such practices of the five percent banks as interest rates paid on savings accounts or service charges on deposit accounts? A. I never gave that any thought in my mind. Citizens and Southern with 115 locations or more, the executive officers that handle that do that, not me, so I wouldn't know that either.

Q. Executive officers are whom? A. I'm talking about Mr. Dan Handley and Mr. Joe Hall.

Q. Okay. Could we go back to this business of the advice and guidance. Could you spell out just a little bit more what you, the significance of the folks out at Sandy Springs looking to Citizens and Southern for advice and guidance was? A. All right, I think we can do that. Are you **[548]** going to put in a modernization loan program for underprivileged people; help do some property finance; or are you going to use the Citizens and Southern charge card; are you going to amend your pension and profit sharing funds and liberalize them as National Bank has done. Are you going to employ minority people in

the bank. That would be the type of things that I was referring to.

[549] Q. As I recall, you mentioned with respect to the stock in the Tucker bank that—I think Mr. Hodgson asked you about what happened to the bulk of the stock. A. Right.

Q. Outside the five percent that the Holding Company bought. As I recall, you indicated that was sold or distributed to friends of C&S, to ensure ownership in friendly hands. Now, again, I am probably getting your words all garbled up, so would you—— A. No, I think that is exactly what I said.

Q. Again, could you give us an idea of what you had in mind there so far as what is the significance of having the stock of Tucker in what you call friendly hands? In other words, what does that do for you with respect to the bank in Tucker? A. Let's go back to the selection of the—there were two ingredients that I mentioned in placing of the stock in Tucker, most of which was done by Mr. Hall and Mr. Bennett A. Brown, who was then vice-president in charge of correspondent banking. In that primary relationship we saw Tucker as probably one of the great growth areas of Atlanta, that this bank was going to have to have increased capital as time went by, that the price at which stock was sold, that it was going to be one of the most lucrative investments **[550]** anybody could make. And of course it has turned out that way. It is worth over ten times what was paid for it. I think that whenever you sell stock in any institution, where you are participating in it, that you want your stock in friendly hands. I wouldn't say that Tucker is any different than when we went out and got ten thousand new stockholders for the Citizens & Southern National Bank ten years ago. We sold them to our friends, because friends build things together.

Q. Does that situation have any connection in your mind to the voluntary control that you were discussing with Mr. Hodgson while ago? A. I don't think so.

Q. So far as you know or can recall, were the Chamblee and Sandy Springs banks identified to the public as C&S banks during the organizational stage and in the early years of their operation? A. Whether or not we did it consciously, I am not sure, but certainly with the presence of the Citizens & Southern people, it had to be common knowledge, certainly from the supervisory level on down, that we worked together. Now, whether we ran newspaper ads saying that or not, I don't know, but I would say it was common knowledge that it was a C&S-sponsored bank.

[551] Q. Well, I had in mind, by public, it was not the regulatory authorities but the general public that would be affected either by advertising—— A. Well, the same thing, the same thing would be true.

Q. I am not sure if I understand you. Are you saying that the public was made aware of the relationship? A. I am sure the public was. Now, whether we consciously bought advertising in the newspapers to do it, I am not sure. I don't believe we did, but John Q. Public in metropolitan Atlanta, ever since we began developing retail banking, would almost bet that if anything was being done around town, it was the C&S Bank. Nobody else was active in the bullpen.

Q. You say C&S is the only bank that helps banks get started in communities where there are no banks? A. I am sure that up until that time there hadn't been a single move by another bank in Atlanta to do what we had been doing.

Q. Well, in terms of forming or helping a bank start, wasn't a bank—the formation of a new bank assisted by Trust Company in Chamblee at the same time? A. The Trust Company of Georgia acquired a bank **[552]** because it had been organized by Mr. Malcolm Bryant, who became uneligible—ineligible to own it when he became president of the Federal Reserve Bank of Atlanta. And he had to dispose of it to legally qualify. That is the way the Trust Company got started.

Q. Oh, excuse me, are you speaking of—I'm sorry. Are you speaking of Trust Company itself? A. Yes, sir.

Q. Oh, I am sorry. I misled you. A. Yeah, Trust Company.

Q. I was thinking of—— A. No, no, the Trust Company.

Q. I wasn't going back that far. No, I was thinking in terms of—I was asking you about the situation in Chamblee. A. Well, I think——

Q. The formation of the Peachtree Bank. A. Well, I think they were playing copycat.

Q. But it was at the same time that you folks had—— A. No, not at the time. They didn't organize the bank in Chamblee; we did.

Q. No, they didn't organize the Chamblee National Bank, right. A. I don't keep up with what the competitors do; **[553]** they don't do much.

Q. So far as the Stone Mountain situation is concerned, I sort of got the impression from what you were saying that the real difference, so far as your concern at Stone Mountain, from other associate banks, was the independence of the people who were making up, by and large, making up the board of directors. Is that a fair reading of your statements as to Stone Mountain? A. Partially. I think probably more important is that at the time the bank was organized, I did not spell out to the organizing directors what association with the Citizens & Southern could mean, why they would benefit if we organized the bank with a five-percent interest without being able to apply our young, aggressive management, and we were looking forward together, as we did in Chamblee and Sandy Springs; we are going to be lacking. That was my first chance; I was inexperienced, and we hadn't developed a philosophy or a policy at that time. That was a plaything, went with the rock.

[554] Q. And do you allow banks to use the Citizens and Southern name who are not part of the Citizens and Southern system? A. No, sir.

Q. Well, then, doesn't the fact that you allow Stone Mountain to use your name indicate that Stone Mountain is part of the system? A. When the other banks, five percent banks, were changing their name, we offered to the directors of that bank the privilege of changing the name if they thought it would enhance the growth and development of the bank. At first they were reluctant to do so and then realized it would be wheat in the bin and money in the till if they could draw the association closer together in the public's mind.

Q. I'm not sure if I—perhaps you didn't understand my question. Maybe I'm not understanding your answer. But, let's maybe back up a step. At that time, the time that Stone Mountain began using your name, in the subsequent years, wasn't Stone Mountain by virtue of that fact a part of the Citizens and Southern system? A. With the exception of personalities involved, yes.

Q. And here by that you mean the personalities on the Board of Directors? **[555]** A. And to some extent the officers of the bank as well.

Q. Mr. Lane, can you recall back, this would be back in April of '68, going up to Washington with, I think, it was Mr. Hall and Mr. Starkes and Mr. Fortuna and perhaps some other folks? A. Yes, sir.

Q. To meet with some of the staff members at the Reserve Board? A. Yes, sir.

Q. Can you recall at that time having discussions with the Board staff about the questions of control? Do you recall the issue of control? A. The entire purpose of the meeting was to discuss control, manner of control and how it evolved.

Q. As I recall, that hearing, and if you like, we could get into specific stages, but let's see if we could just get some broad items out. As I recall, the hearing, I got the impression that you had made it plain to the Reserve Board that Citizens and Southern did not have any control over its five percent banks? A. That is to say we had no control over the voting shares or the election of directors.

Q. In other words, that's what I was trying to clarify, but that was the context of your remarks? **[556]** A. Context with the Reserve Board hearing entirely with the question of legality and compliance with the Georgia statute. I guess with the Federal Reserve statute, too, sure, obviously.

Q. Can you give me a little bit more on what you mean when you indicate that the five percent banks or correspondent associates don't compete with Citizens and Southern National? Let me ask it a different way. By that are you indicating that they, the five percent banks, involved in this case, have the same competitive practices as Citizens and Southern National or have the same interest rate on savings accounts or service charges? Just what are you indicating in terms of there is no competition.

Mr. Hodgson: If Your Honor please, I ask that Mr. Kinkaid rephrase the question. I object to what he has asked because it has words of art in it to the extent that he is talking about competitive practices. I'd like for him to ask Mr. Lane, if he wishes, specific ones in serial, but not as a broad matter because Mr. Lane might not know what Mr. Kinkaid meant or what is on Your Honor's mind.

By Mr. Kinkaid

Q. We will try here again. A. All right.

Q. First of all, maybe I'd better establish that **[557]** I am recalling your direct testimony correctly, did you as a matter of fact have an occasion to indicate on direct testimony that the five percent banks don't compete with C&S National? A. No,

sir, you're exactly right. In fact, we have helped them get business for themselves.

Q. Okay. Then, what I'm trying to get at is when you say that they don't compete, does that mean that they have the same—— A. They do not.

Q. ——interest rates? A. It means they do not compete for business and the help for customers of the bank in services or otherwise.

Q. Perhaps I could ask it another way. This would help me. From your standpoint as a banker, how would they be—how would banks or how do banks compete for the customers that you have just indicated? A. You advertise, use the direct mail, you get on television, you go calling and say, "Give me your bank account, don't keep it where you've got it."

Q. Now, are you saying that someone from a correspondent associate would not call on a Citizens and Southern National customer and try and take the account away? **[558]** A. Yes, sir, they will do that for convenience, and we urge them to. In fact, we have helped build these banks by putting them in places that were more convenient to Citizens and Southern National Bank customers than places where they were banking with us before.

Q. Well, the idea of convenience suggests to me, for example, that this would mean only a Citizens and Southern National customer, for example, up in Sandy Springs would be closer to C&S Sandy Springs than it is to National. A. Right.

Q. Does it go beyond that that wouldn't Sandy Springs call on a Citizens and Southern National customer who was located closer in than where he would be just as convenient to a National office? A. I don't think so.

Q. Is there any particular reason for that? A. I don't know what calling they would do, to tell you the truth. We are speculating. I do not know.

Q. And am I right in recalling that when Sandy Springs and Chamblee were formed there, that most of the stockholders of those banks were unrelated to the Citizens and Southern? A. I do not know. I think the stockholders' list would show that. I just don't know.

[559] Q. What I had in mind was there was a statement that you made in that Federal hearing that we just mentioned, would you like a copy of this to take a look at for yourself? A. No, I don't.

Q. I will try to read it accurately. A. Okay.

Q. Incidentally, Your Honor, this is Government's Exhibit 177. I think it also has a defendant's number on it, too, but I don't see it.

Looks as though this starts on the top of page 118, Mr. Noble, one of the attorneys on the Federal staff, asked, "I mean is it true that someone has an ownership interest greater than the combined interest of Citizens and Southern and the president's?"

Now, your answer was, "That is true at Warner Robbins, it was true at Pelham." Then following your statement then Mr. Hall indicated that is true at Chamblee, it's true at Sandy Springs and true at Fayetteville.

Then, on page 119, you got into a discussion with the Federal attorneys about divorces following marriages and what not, and you made a remark that there are also some common-law brides, too, and at which one of the Federal attorneys noted which the law recognizes as being marriages some place and then Mr. Noble popped in **[560]** with the Chamblee National Bank, whereupon you said that "This is a bank where there was a group of citizens, there was no bank in the community, it was at the north end of Atlanta, and a group of citizens were being put together by a Trust Company of Georgia." Reading on, after you met with these folks from Chamblee Springs, you "probably have less affiliated interests

of any kind in that bank than in any of the five percenters that started. They organized the bank and I said, please, I am a better partner for you than the Trust Company." Does that sort of refresh—that was four years ago—your memory would be better than it is now. A. The organizing group—I think I said this a while ago when Mr. Hodgson was questioning me, I found out they were talking about organizing a bank themselves. I got a hold of them to try and sell them on Citizens and Southern. When I did that I found out they were talking with Trust Company of Georgia.

Q. Do you recall—is this right, the unrelated interest in Chamblee would be the unrelated stock and stockholders? In other words, there was a large proportion of the stock in Chamblee held by people unrelated? A. People we didn't know.

Q. Yes. A. I think that's probably so.

[561] Q. Does that sound reasonable to your memory at this point? A. I think so.

Mr. Kinkaid: Would you excuse me a moment, Your Honor?

Q. In view of the fact that as you seem to recall that there were a lot of people that held stock at Chamblee who were not affiliated or related to Citizens and Southern at that time, how would you characterize that in terms of Stone Mountain? It sounds to me like in those earlier days with a great many people having, being unrelated to Citizens and Southern, that the situation at Chamblee then would have been very similar to the situation at Sone Mountain that you described. A. Only in, different in one respect, that the organizing directors of Chamblee started their bank with the express interest of not only having the name Citizens and Southern, but being a part of Citizens and Southern. When the merger came to pass that was contemplated. That was not contemplated at Stone Mountain.

[562] Q. Did you just say that they contemplated having the Citizens & Southern name? A. No, they did not, because we hadn't—they hadn't changed the name yet but contemplated being a part of the Citizens & Southern.

Q. Okay. A. That was their—that is the way they started out. Stone Mountain just didn't start that way.

Q. We were just talking a minute ago about the competitive practices, interest on savings accounts and the like. Let's go back to that for one second. If a loan customer is rejected for a loan, let's say, by C&S Chamblee, now he is then looking for another bank to try to borrow. If he goes to a National branch or if he goes over to, say, C&S Tucker, would he automatically be rejected for a loan just because he had been rejected by Chamblee? A. I would like to answer that, but I don't have any part of that daily supervision.

Mr. Kinkaid: No further questions, Your Honor. Thank you, Mr. Lane.

A. Thank you, Mr. Kinkaid.

Redirect Examination

By Mr. Hodgson

Q. Mr. Lane, Mr. Kinkaid asked you some **[563]** questions about your verbs in providing management or recommending and so on. The fact is that you did supply and provide management to these banks, didn't you? A. Yes, sir.

Q. From the Citizens & Southern National Bank. A. Yes, sir.

Q. And when Mr. Kinkaid was asking you about ultimate legal corporate responsibility for making decisions, it is a fact that these boards and management did follow your advice, didn't they? A. Yes, sir.

Q. And in talking in terms of stock being in friendly hands, that doesn't hurt voluntary control, does it? A. No, sir.

Q. With respect to the Federal Reserve Board hearing in April of 1968, you did go into this entire relationship, did you not? A. Yes, sir.

Q. And there was a representative of the Anti-Trust Division of the Department of Justice there, was there not? A. Yes, sir.

Mr. Hodgson: No further questions, **[564]** Your Honor.

The Court: Let me ask you a couple of questions, if I may, Mr. Lane.

A. Yes, sir.

The Court: You were asked a question by both counsel that dealt with an area which, as I understand the defense, is critical to the defense. The concept, as I would articulate, would be that these five banks that are involved are five-percent banks.

A. Yes, sir.

The Court: The five-percent banks are a part of the C&S system, that there has been no competition between C&S and these banks in the past, and there is no likelihood of competition between the C&S and these banks in the future; therefore, if the merger is allowed and they become branches of the C&S Bank——

A. Uh-huh.

The Court: ——there will be no diminution of competition.

A. Right, yes, sir.

The Court: That is the argument, as I understand.

[565] A. Yes, sir.

The Court: Now, with that argument, it becomes important to know what difference does five-percent ownership make. Five percent is just five percent of the ownership of the stock in a small bank; now take two banks and maybe both correspondents of yours, I don't know, but which are identically located, and neither affiliated with another bank. What difference does it make to you that you have got five-percent ownership in one of them and you don't in the other?

A. I don't believe I understand that.

The Court: All right. Take two banks similarly situated, like Sandy Springs or any one of these.

A. Right.

The Court: And they are not affiliated with any other bank.

A. Right.

The Court: Does the five-percent stock ownership mean that much to the C&S that you would treat one differently from the other?

A. It binds the cheese together.

The Court: It is sort of a symbolical **[566]** situation, isn't it? It isn't a monetary situation?

A. No, but only through that we have the ability to transfer personnel without fringe-benefit changes, pension-to-pension plans.

The Court: How does it do that?

A. Well, if you go to work for the Citizens & Southern National Bank and we pick up your pension and you draw the C&S pension fund, and you move to Sandy Springs, you are still a member of the pension plan with past service going from the time you first went to work for the bank.

The Court: Why is that? Because the C&S pension plan is so written as to allow that?

A. No, the—yes, that the relationship between the five-percent bank and the National Bank permits movement of personnel as though it were a branch.

The Court: Is that a legal concept or one that the C&S had adopted, that it will so consider the five-percenter as a branch?

A. Judge, I don't know about the legality, but it is true that when Stone Mountain disassociated, the pension interchange came to an end. When we sold our interest in Brunswick, that came to an end. When we **[567]** sold in Pelham, that came to an end and did not continue. That is, as far as I know that that —well, I don't know but I would assume that our qualification for the instrument by the IRS is that this is all you have an ownership in and you can extend this to it. We don't have a so-called master plan.

The Court: All right. Well, let me go a step further with respect to the cooperation and the sponsorship and the responsibility of the C&S. Five percenters are still separate corporations?

A. Yes, sir.

The Court: Have you gone so far, for example, say, in the C&S in the Sandy Springs situation or any other place to have to bail them out of a financial loss, and, if so, how can you do it?

A. In the case of Sandy Springs, we put in capital notes to meet supervisory requirements. In the case of Tucker, we purchased convertible debentures to increase its capital.

The Court: But you made loans to them, in effect, which would have to be repaid?

A. In Tucker it is convertible into common stock. **[568]** In Stone Mountain, the additional capital is convertible into common stock. And I want to give you what you want; I am not trying to withhold anything.

The Court: No, I am trying to see how it is when you can say a five-percent bank is a C&S bank, and it will never change, and one which is identically situated except for that five-percent ownership that falls in a different category. What is the magic or the ecstasy of five-percent stock ownership, which may be simply a few thousand dollars, which I am sure means not very much to the C&S as a system, just that particular amount of stock?

A. Well, as I say, it binds the cheese. It gives us a contemplation of acquisition or merger; the willingness to allow it to use the name Citizens & Southern, to have all the merger——

The Court: You could do that to someone else, I take it, if the C&S wished to?

A. We would never do that.

The Court: What is in the five percent that makes you wish to?

A. Contemplation that we would be able to **[569]** acquire these banks down the road. If the law said your minimum is three percent, I think we would have taken three percent.

The Court: All right. Do you make any difference in classification among your five-percenters as among those that you expect to acquire down the road and those you don't?

A. Yes, sir.

The Court: And where did that differentiation take place?

A. It takes place where there is interest in the bank on one hand larger than ours that could become incompatible at some point in the future that is compatible today. We were once compatible with the Hands of Pelham. They owned the bank; we did not have the persuasive influence because it was a bank already in existence. It had not started with us as a new bank. The same thing is true in Fayetteville, where they rely on us, where they are operating just as much as they would a C&S

bank today, the same as the five percenter. But, its name is still the Farmers & Merchants Bank of Fayetteville, because the Redwine family own the bank. We are friends. The Redwines have been in court before on family squabbles, in **[570]** estate things that they have to settle. We don't have the same assurance with the Redwines, although they have got a C&S man down there, and young Redwine, who is the president of the bank, was trained in the C&S Bank.

The same is true at Hogansville. At Hogansville we have a five-percent interest. The Heinz family control the bank, fifty-one percent of it. He wanted us to have a five-percent interest so he could have the advantages of our helping him, but with never the contemplation that it would be a part of the Citizens & Southern in full.

I don't think the Redwines ever contemplate that even if we could go to Fayette County that they would like to be a branch of the Citizens & Southern.

The Court: Why do you own five percent in those banks? Why don't you just have——

A. I guess sometimes I made a career out of being misunderstood, but Old Man Kil Redwine came to me and asked me and asked me and said, "We would like to have your pension plan and we need your help," as a matter of fact. In Fayetteville's case, this was the only bank left in the state of Georgia that was not a member of the F.D.I.C. It had been a private bank, and I used to travel through **[571]** Fayetteville on the way to La Grange, where I was a director, and I would stop in and see the old man and sit around the hot-stuff stove, and I would tease him, say, "Why don't you make me chairman of the building committee? Let's build a new building. Let's join the F.D.I.C." And out of that came a personal friendship, and there came a day when Mr. Redwine, who at that time was banking with another bank and wanted to make a substantial loan of $100,000, and he got turned down. And he came to

see me and said, "My brother, Charley, didn't like you all because you turned him down in the Depression, but I would like to have $100,000." I said, "Sign right here." And from that came a personal friendship and his asking me to help him get the F.D.I.C. insurance, train his son, build them a new building, design it, which we did, purely a personal relationship and a desire to help Fayetteville. I am not always motivated by economic gain.

The same thing was true at Hogansville.

The Court: Well, let me ask you the question which perhaps may not even be answerable. We have heard, in cases of two other banks, similar attempts such as this, and following opposition, apparently there was a divestment of whatever stock ownership **[572]** there was.

A. Yeah, sure.

The Court: What are the economics or what is the situation with respect to these five banks that are under consideration if the Court is required to forecast, what is there——

A. Future?

The Court: Future, absent, approval? What is it as a continuance of a five-percent bank or a divestment, and why and wherefore?

A. Well, I think that is the most important question you can ask me. It would be a tragedy and a calamity, because we have never contemplated that that would ever come to pass. Now, we only have five percent of these banks, for the most part, the stockholders have.

The Court: Let me stop you at that point and throw a time factor in there. You have indicated you openly contemplated, if it was ever permissible, that it would become a part of your bank.

A. Right, yeah.

The Court: But, was there ever, in the original formation, any time factor attached to that forecast or was it simply **[573]** an indefinite partnership on a five-percent basis?

A. I think it was the latter, but with the feeling that it was going to come sooner than we thought, that the mood of Georgia banking and the—for the first time, the unanimity of thought among the Atlanta banks working together to try and get expanded city limits, that we thought it was going to be much shorter than that.

[574] The Court: Unless you were committing yourself for then an indefinite time to a five percent partnership?

The Witness: Yes, sir.

The Court: Assume a disapproval here, what happens and why?

The Witness: I do not know, it would be the biggest dilemma we would ever face.

The Court: What would be the motivating factor for you to divest? I assume one thing would be to free your skirts, so to speak, for branching if you could get approval, or what would be the factors as to the retention of the five percent? Doesn't it keep those banks closer to you in the event that you can't get in those areas yourself and in closer cooperation? How do the factors balance out?

The Witness: If that were to come to pass, it's going to take an awful lot of weighing on the part of the stockholders of these banks and their directors, and Citizens and Southern National Bank management to decide just what in the world to do. On the one hand is a market place and your name on a shingle that you want to keep giving people Citizens and Southern banking, and yet here is a **[575]** bank that has got its name on it already. If you took it off, you would damage it. I don't know, I just honestly don't know. I wish I knew.

The Court: Let me ask you a related question. How can you justify sending a customer of the Citizens and Southern to the C&S Sandy Springs and call it convenience?

The Witness: I guess it gets back to Mills Lane as individual and the way I was raised and trained. All my life I've done things to help other people unselfishly without, I guess, it's part of the way I was brought up.

The Court: Well, as I understand it, the effect is that you lose ninety-five percent of whatever profit there is in that account.

The Witness: Yes, as far as profit to the stockholder is concerned. You've got friends of the Citizens and Southern that are both the directors and stockholders and you've got a whole separate different set of stockholders and directors for Citizens and Southern National Bank.

The Court: The stockholders of Citizens and Southern Bank have a duty to maximize profits to that corporation.

The Witness: That's right. I've thought **[576]** about this. I do not know what in the world we would do. It would be the worst drastic dilemma we could ever face. I don't know what in the world to do.

The Court: Well, what basis has the Court got to say that absent this suit these banks would continue forever as Citizens and Southern Banks?

The Witness: I can't speak beyond my lifetime or the lifetime beyond Dick Kattel or C&S management. I'm paid by C&S Bank, my investment majority is in C&S National Bank, that's my heart, that's my love. The same with all these men out here who are presidents of these five percent banks. If anything ever happened to those five percent banks, we had to divest ourselves of them, they would be welcome back in Citizens and Southern National Bank. It's been their past, it's their present. It's what they want to make their future. It

would be painful and costly to the stockholders of these banks. When the rate of exchange was determined from Sandy Springs, took Sandy Springs' bank stock, the ratio was at that time as Citizens and Southern National Bank stock was selling for $23 a share. It's now selling for forty-seven. They are going to take a terrific financial loss with that rate of **[577]** exchange. It was fair to them in the first place, but now has doubled in value. Without the Citizens and Southern tie with an adverse decision, that exchange is gone. The little bank is cast adrift and as we both agreed, we have got a five percent stock and they've got our name, and yet their daddy and mother, aunt and uncles in Citizens and Southern National Bank, every bank merger in Atlanta that any of the major banks have proposed, including the Peoples American, have been challenged. Everybody else dropped off and wouldn't contest the issue. Here's the FDIC that's giving us approval of mergers and in the same breath says, "You can't have a new branch," and in this year and a half that we have labored and suffered, twenty-seven banks have been opened in DeKalb County by competitors. We are losing a share of the market in a most unfair way. It just leaves you gasping. The war between banking bureaucracies, Federal Reserve doesn't see things like the Comptroller of the Currency. The Comptroller doesn't see things the way the FDIC does. You take and scramble up the approval of these mergers which are totally unrelated to whether or not we ought to have a new branch and new market place, it deliberately makes us stand by for over a year and **[578]** with the contemplation that this litigation, if it were settled in our favor, would not bring it to an end, but could go another year, has punished the Citizens and Southern Bank, disturbed the morale of its officers and directors, employees. I'm sure it's very pleasing to our competitors.

The Court: Well, it occurred to me that about the only basis I could think of where the Citizens and Southern really could change Citizens and Southern National customers where their

banks would be an ultimate contemplation that that is to become a part of your system. I assume that, though from your testimony, that that was applicable, say, to Stone Mountain.

The Witness: Of course, we contemplated from our side that Stone Mountain would become a part. I don't think we would have urged them to have taken our name if we hadn't thought that. I misjudged the character and attitude of Stone Mountain because I was not in touch with their management organization. There was a misjudgment on my part.

The Court: People's attitudes, of course, can change. It really boils down to the fact that the only place where you can really have a continuing contemplation that what you went into it with would **[579]** stay the same, the situation would stay the same, would be where the ownership other than that of Citizens and Southern was so fragmented that there was no possible court, antitrust action possible.

The Witness: That's certainly a possibility. I wish I knew what we would want to do and would have to do if that came to pass. It would be a decision that Mr. Kattel will have to make. I will probably be retired by the time this thing is resolved.

The Court: I suspect that everybody has to reconcile themselves. This has got to go to one more level at least, if not two.

The Witness: And in the meantime, we are hurting, banking is hurting. You can't hurt one bank without hurting the banking industry. Atlanta banking stands out in the nation for its progressiveness, what it's done. I don't know of any community where four banks have the mutual respect, trust and confidence that exists in Atlanta today. It wasn't always that way, but an adverse decision would set Atlanta's banking back as well as Citizens and Southern.

The Court: What I am seeking is not the results of this decision because that decision here has to be made on the record, but a forecast as, **[580]** which is purely a hypothetical one, if absent a decision by this Court, what would happen to those five banks?

The Witness: I don't know. There are, of course, several things that could happen. I don't know which one would take place.

The Court: Well, thank you very much. Anything further?

Mr. Kinkaid: No, Your Honor.

The Court: You may step down.

Let's see, it's a quarter of five. How long is your next witness going to be, or do you wish to wait until tomorrow morning?

Mr. Doyle: I'd prefer to waiting until in the morning.

The Court: We will recess until 10:00 A. M.

(Whereupon, court was recessed at 4:45 P. M. to reconvene at 10:00 A.M., September 28, 1972.)

[581] **Volume IV**

(Title omitted in printing)

Transcript of proceedings had before The Honorable Charles A. Moye, Jr., Judge, United States District Court, on the 28th day of September, 1972, commencing at 10:00 o'clock A.M., in Atlanta, Fulton County, Georgia.

[582] The Court: Are we ready to proceed?

Mr. Hodgson: I call Mr. Howard Starks.

HOWARD STARKS,

being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Hodgson

Q. Will you state your full name for the record? A. Howard S. Starks.

Q. What is your position with the Citizens & Southern Bank? A. Executive vice-president.

Q. Of the Citizens & Southern National Bank? A. Yes.

Q. What are your responsibilities in that position? A. I concern myself with services that we sell to people as opposed to those we sell to corporations.

Q. What is known as retail banking? A. Yes.

Q. What was your position before that? A. I was executive vice-president in charge of branch supervision.

Q. When did you become in charge of retail banking? **[583]** A. I believe it was '69.

Q. How long had you been in charge as a branch supervisor? A. Since about 1963 or '64.

Q. Previous to that, what was your position? A. I was assistant to the president.

Q. Mr. Lane? A. Yes.

Q. When did you become assistant to the president? A. In 1962, I believe.

Q. Mr. Starks, have you had experience in banking in the area of marketing? A. Yes.

Q. What experience have you had? A. Well, in the late 50's, I was marketing director.

Q. Have you had anything to do with the question concerning joint identification of banking services of Citizens & Southern? A. Yes.

Q. And the development of the logogram and how it is used? A. Yes.

Q. Will you describe for us exactly how the **[584]** bank came to use the logogram? A. Well, it dawned on us, I believe in the late 60's, we had been having architects design our banks; we saw the value in having a common identification, especially when we became known as the C&S Bank as opposed to Citizens and Southern National Bank. We felt this would be helpful, let everyone know when they saw this logogram full banking services were available. Much the same as when you see the sign on the Waffle House or a Gulf station.

[585] Q. Why did you allow—well, let me ask you this question. Do you or do you not allow the banks, the correspondent associate banks in which you own a 5% interest to use the name in Logogram? A. Yes, we do.

Q. Why do you allow them to use it? A. Because this is where Citizens & Southern's services are available.

Q. Is this true in each instance where you own 5% interest in the stock of the bank? A. Wherever the name C&S Bank is a part of the 5 percenter relationship, yes, we permit the use.

Q. Correspondent associate relationship? A. Yes.

Q. Do you have any banks that you own five per cent of the stock which you do not have correspondent relationships with? A. No, sir. Restate the question.

Q. Are there any banks in which the holding company owns a 5% interest which you do not consider to be correspondent associated banks and which do not bear the name and logo? A. Yes, there is one in Cartersville; there is one in Fayetteville that do not carry the C&S Bank for a name, nor use the logo.

[586] The Court: It would be most helpful if you would get for me the definition of what is correspondent associate. What is the difference between a correspondent bank and correspondent associate bank? Is there something at an associate bank that there is not at a correspondent bank? What is the difference of putting the two words there?

Mr. Hodgson: I will speak in my place, Your Honor. Apart from the words, such as subsidiary and affiliate which do have those confusing differences, do have specific connotations. This one does not.

I will, therefore, ask Mr. Starks what the word correspondent associate bank or associate correspondent bank mean to you?

A. It's a phrase for identification which we have given to banks in which we own a 5% interest.

The Court: It is completely interchangeable with the 5%?

A. Yes, not completely interchangeable because we do have banks, we have a 5% interest that do not carry the Citizens & Southern name.

Mr. Hodgson: Frankly, I think Mr. Hall can testify much more in depth as to this question than Mr. Starks. I simply wanted him to state the distinction at this time.
[587] There are banks which do not carry the name and are not considered correspondent associated banks and have 5% interest. There is a difference.

The Court: You can tell me in your place, it will be just as useful, correspondent associate bank is a bank that has C&S correspondent services, plus the 5% interest generally?

Mr. Hodgson: Let me put them in three categories, if I may, because we are using two names, correspondent and associated. There are banks, and we'll put these aside. There are banks in which the Citizens & Southern Holding Company own 5% of the shares purely as an investment without any other rela-

tionship, which may include a correspondent relationship or may not. That is really not important whether it does.

There are some in which we have a purchase investment, some of them outside the state even. These appear in our annual statements which are part of the record. That is the purchased 5% interest.

Then there are those in which we own a 5% interest of the stock, which is the maximum that is allowed us in banks under the Georgia law, and if we wanted more than that under the Federal law, we would have to make application under Section 3 of the Federal Bank Holding Company Act to acquire it, **[588]** even if Georgia law permitted us to have more. But there are some of those in which, as I think Mr. Lane testified to an extent, Your Honor. These witnesses will testify there are some of those with which we feel such a close relationship that in addition to their being just 5%, we also call them correspondent associated banks or associate correspondents or frequently the word five percenters is used with respect to these, even though we may have a 5% interest in others.

So when Mr. Starks is talking about 5 percenters, I believe though he will testify to this, he is talking only about those with which we claim this very close relationship which we say gives us that variety of management control. So, that they are the same thing as affiliated with the technicalities of law permitted or the same thing as branches with technicalities of law permitted. That is when I say affiliates, I am going back to the Federal Reserve Act, related statutes, which affiliate is where you have a majority control of stock.

Did I pursue this far enough?

The Court: I think so. I get the idea that the correspondent associate tag or definition then is indicative of the somewhat subjective feeling on **[589]** the part of the Citizens & Southern in respect to——

Mr. Hodgson: No, sir, we feel it's a lot deeper than that. That's what we wish to develop during the day. It's far deeper than subjective. There is neither the legal control or ownership of more than the voting stock in a holding company itself. But there are shareholding by many friends, there are shareholdings by those who invited us to these banks for the purpose of expressing a desire that this relationship exists. There are Directors whose invitations caused this to come about in a mutual endeavor. There are officers who have supplied us who are Citizens & Southern born, bred and trained. There are systems in management and policies and all these things that go along and all of these relationships that enable us to rely as surely as if we owned the stock on those banks, being part of our system just as much as though they were a branch in which case there is simply divisions of the corporate structure where an affiliate being one which is part of the majority stock ownership of the holding company structure.

We do not quarrel with the legal results of that, that there is a possibility, this possibility that we lawyers talk about all the time, anything can **[590]** happen. That these banks could then, should they change their minds and their desires to have these relationships, re-sever themselves, nevertheless, because we were invited, because of our friendly shareholders, because of our friendly Directors, because of our management which is our management, all of which has been invited and which we give, when that happens, we then allow them to use the name and the logo. We then call them associated correspondents. Up until that time, the relationship is the existant one over which we would have no possibility of making a prediction.

We cannot say there is no possibility that there would be a separation, but we can, as we argued to the FDIC, argued strongly, that there is no reasonable possibility that it will take place absent it being forced upon us and that is, I think, the heart of the whole investigation, if Your Honor please, and it's

for this reason that I'm asking these witnesses to testify with respect to this relationship.

Now the ones in which we simply own a 5% interest and have not tagged with the word correspondent associates, are just plain correspondents. There are just correspondents in **[591]** addition to that.

[592] The Court: What you were sponsoring was not intended to minimize the familiarity or the strength of the relationship you have just mentioned. In using the word "subjective," I still understand it to be a subjective determination by the C&S Bank to the point that the relationship amounted to such a bond that the C&S gave it its designation and called it a correspondent associate.

Mr. Hodgson: I guess, Your Honor, there is no one stand when you get to the correspondent associate. I will make one point, it is a mutually agreed-upon thing; it is not opposed by either party. It is invited by either party, so they jointly agree and decide.

The Court: But it becomes subjective; I think that is the point, when the C&S is willing to entrust its goodwill and logo to the other bank.

Mr. Hodgson: It is obviously agreed it is an evolution that came about through a change in directors as the restrictive banking laws change.

[593] By Mr. Hodgson

Q. Mr. Starks, you heard Mr. Lane testify yesterday, I believe, with respect to Sandy Springs? A. Yes.

Q. In an effort to avoid duplication of the testimony already in the record, I will not ask you to state anything that you know of that he has already testified to. Will you tell the Court, if you don't mind, what your experience actually was with respect to the beginnings of Sandy Springs? A. Well, it was in

late '63 or early '64 we were developing a branch supervision in our organization; primarily, at this time we had sufficient banks that warranted branch supervision. Along about that time, as part of my activities, I was given the opportunity to review such audits and credit examinations as were being made of the bank in Sandy Springs. It became apparent that the bank was headed for trouble. I went to Mr. Lane and asked him if I might sit with the board, if I might not put them on the same system we were in the process of developing for the branch so that we might be able to detect these problems and cure them before it became cancerous. It was agreeable, and at first I sat there informally with the board and was later elected to the board and later having to resign **[594]** because the area was viewed as contiguous to Fulton County.

Q. That is under the Clayton Act? A. Yes.

Q. Mr. Starks, why do you feel it was your responsibility to take charge over the credits and loans of this bank when all you had was a five-percent stock interest? A. Well, there was a C&S man running that bank. It was recognized by a lot, if not most people, that this bank was organized by the C&S Bank, and we certainly had more than even a moral obligation to see that it met the convenience and needs of the Sandy Springs and that it was a valuable and profitable operation.

Q. Would you advise the Court of after this time how you treated the Sandy Springs in relation to how you were beginning to treat all branches in your supervision. A. We asked them to send in the same reports; we gave them the benefit of our sales information. We did this in an attempt to make these banks more effective.

Q. What was the attitude of the board members who were already there to your presence? **[595]** A. I think the relationship developed here very quickly that was the relationship that existed and has existed all along was one of mutual trust and confidence, one of respect.

Q. Will you tell us about the Chamblee branch, as far as you have recollection of it? A. Well, George McKinnon and Mr. Lane were involved in that organization of the bank. The selection of the organizers, the selection of the directors, and I guess I got into the stream about in '64, somewhere along that line. Again, I was first as an advisor to the board and later as a board member, in more or less the same role I played in Sandy Springs.

[595-A] Q. Tell us something about Mr. McKinnon. A. He was first vice-president. I thing he was cashier at one time and later vice-president and cashier. When we acquired the Bank of Atlanta, he became president of that bank. When that bank merged with C&S National Bank, he was first vice-president and later assistant to the president.

Q. Do you recall the opening, say, at the Chamblee Bank? A. Yes, we had a lot of fun with those.

Q. Will you describe for us some of the things you did? A. Well, at the Chamblee opening, we thought it was important for the people to know we were in the community and we were anxious to serve them, and over and above the usual newspaper announcements, we had a formal opening where we invited the people to come by and look us over. In order to do that, we sent invitations to them telling them to come by. Hopefully, they would do some business. We also decided to take a group, a C&S group of employees, junior officers and so on, to Chamblee and go house-to-house and door-to-door extending invitations to the opening, inviting them to come and bank at the Chamblee National Bank.

Q. How many people do you recall were involved **[595-B]** in this? A. Maybe as many as forty or fifty.

Q. For how long? A. Two or three days immediately preceding the opening.

Q. Is that what is known as a blitz? A. Yes, that is what we referred to as a blitz. A few got bit by a few dogs, too.

Q. Did you do this consistently with other bank openings also? A. Yes.

Q. Was there a distinction as to whether it was a branch or a five-percenter opening? A. No.

Q. Tell us your recollection of the C&S Park National. A. Park National was started when we recognized really that Executive Park was a developing area. Even though we had an office at Toco Hills, we felt some of the C&S National Bank customers were moving out there and there was growth in that area such that it warranted a banking office in the Executive Park proper, and the only way we could get it there was through a five-percent correspondent associate. So negotiations were begun for a lease.

[595-C] Q. Who negotiated that lease? A. I believe I had a good part of it, along with Bob Hazelrig, who was president of that bank.

Q. Why was Bob Hazelrig selected to be president? A. Well, he had to deal with the corporate accounts division, and when this office opened, it was felt these were business relationships rather than what I would refer to as a bedroom community. This was a business community.

Q. Where did the shareholders come from? A. Well, the shareholders came from the customers of the C&S Bank. People who were corporate customers of the C&S Bank and friends of Mr. Hazelrig's. The directors were primarily people who we did business within that area.

Q. How were the organizers and directors selected? A. If my memory serves me correctly, Bob Hazelrig and I selected them or made up the slates and Mr. Lane referred them.

[596] Q. Tell us your recollection about Citizens & Southern at North Fulton out at North Roswell. A. There was a group in

Roswell which felt that they needed additional facilities out there and this was after, I believe Mr. Lane's testimony of yesterday with Mr. Sims Garrett, and I was not involved in that negotiation. I was invited to lunch one day with Dr. Irving in that community, Mr. Harold Benson, I believe, and the bank, it was decided that we would put a bank in Roswell and that Mr. Lane, who had formerly been in Sandy Springs would go out to run it. Lou Fortuna, who was at that time at Sandy Springs, was serving a great number of customers from Roswell. It was very apparent that there was a need, that they had to come by several banks to do business with Citizens & Southern Bank. And so we wanted to go out there. This was the way it was evolved. Lane sold the stock, the friends at Citizens & Southern Bank, officers, employees of the Citizens & Southern Bank bought a little stock in it, too.

Q. How was the Board selected? A. In much the same fashion, Hugh Lane mainly made the nomination, we submitted them and they were approved by Mr. Lane.

Q. Who provided the economics research? A. Our market research department at the Citizens **[597]** & Southern National Bank in the person of Mr. Ray Herman.

Q. Who provided and warehoused the property for eventual use? A. We bought the property, as I recall, in the Citizens & Southern Holding Comapny. We also bought a building, what was termed then a portable building, temporary quarters which, unfortunately the bank still occupies and leased it to that particular bank. It's now inadequate.

Q. What did you have to do with South DeKalb, Citizens & Southern at South DeKalb? A. Very little, then, other than to anticipate the development in that area and to acquire two pieces of property, even though we couldn't get there at the moment, we anticipated there'd be changes in the branch banking laws. We knew it had to be there ultimately. I merely acquired

the property and then Dan Handley subsequently organized the handling of it.

Q. Did you ever have anything to do with the Citizens & Southern Bank at Stone Mountain? A. Yes, I did.

Q. Would you explain to the Court how that came about? A. I'm just trying to remember, refresh my memory on that date. I know the bank was organized in '57. **[598]** I had nothing to do with that. I know in '59, we acquired a 5% interest in the bank. Mr. Hall went on the Board. It was sometime after that, in the middle of '60, that Joe was, felt that he needed a little help. That two people might be more effective on that Board and the bank, at that time, was having some credit problems and I had had some credit experience. We felt that we were complementing one another. I subsequently went on that Board after some hassel trying to get qualifying shares.

Q. By Joe, you mean Mr. Joe Hall? A. Mr. Joseph A. Hall, III.

Q. Let me ask you this, Mr. Starks, how many of these 5 percenter boards did you sit on, either as a Director or as an advisory Director, or with whom, or with which you met from time to time? A. All of them in the metropolitan area.

Q. All of them? A. All of them.

Q. Including this one at Stone Mountain? A. Yes, sir.

Q. Was there any difference between the attitude of the Board at Stone Mountain as compared to the others? A. Well, yes, there was a great difference.

Q. Would you describe that difference? A. Well, first of all, Bob Maughon went with that **[599]** bank when it was organized before it became, before we had any interest in it.

Q. Bob Maughon was whom? A. Bob Maughon, I believe, at that time was Cashier at the bank. He had severed his con-

nection with The Citizens & Southern Bank. I think he felt closer to the Board than he did The Citizens & Southern Bank.

I think the fact that the 40% of the bank was controlled by the McCurdy family, they needed us, but I don't think they really wanted us. They called for help when they had credit problems. I think they wanted to get all the good out of it, but they really didn't want to participate and let us really help them manage the bank so it might be most effective.

I recall in trying to institute operational procedures or trying to suggest that certain action be considered or making recommendations that it was often the habit of the Board to postpone any action until the next meeting. I always had a feeling or I do as I reflect it anyway, that they wanted to meet privately after the meeting and bring it up during the meeting again at the next meeting. This is not a fact, this is the way I felt about it.

Q. Do you have any opinion as to whether or not The Citizens & Southern National Bank and Holding Company, **[600]** through branch supervision or otherwise, exerted and exerts today any significant influence or control over the management of the five banks that are the subject of this litigation, Citizens & Southern at North Fulton, at Chamblee, Park National and South DeKalb?

Mr. Frisbie: Your Honor, if I might, that's two questions, actually, and both of these are critical to the issues in this case. If we could break that down into two questions.

Mr. Hodgson: I'm perfectly willing to break them down. What are the two parts?

Mr. Frisbie: You said, did they exert any significant influence or control over management. I believe that is the two separate questions.

Q. Let me ask you, did they exert control over these five banks?

Mr. Frisbie: Your Honor, if I may again, could we have Mr. Hodgson, the same as he required of us, to define control that he is speaking of in this instance?

Q. Let me ask you this, Mr. Starks, what was your view of the relationship between The Citizens & Southern National Bank and Holding Company on one hand and each of these five banks, on the other, with respect to management of those banks? **[601]** A. There's no difference than between our relationship with the branches and the five percenters because what we had to offer was solicited, invited, wanted, received, and our recommendations were readily accepted. I think that even sometimes you have to sell branch managers on a course of action that even makes good sense. But, all of our—we never had any trouble with the exception of Stone Mountain of having the new services that we wanted to offer through the five percenters, as well as the branch accepted, promoted and enthusiastically received, procedures that we wanted to put in, control methods. After all, the guy who ran this bank was a Citizens & Southern man and the Directors respected us and had confidence in us and readily accepted the recommendations that we made.

Q. Had they invited you? A. They invited us, solicited our help and took our advice.

Q. You heard yesterday, I presume, the colloquies between the Court and Mr. Lane and the question was asked somewhat like this, I think. How can you justify serving a five percenter bank correspondent associate bank, with the business of one of the customers of the National Bank when the proprietary interest in that five percenter is just five per cent? Would you respond to that question? A. Well, then this bank, although it may be disbelievable, perhaps, or hard to believe, in some people's minds, has an attitude that the interest of the community comes first and that customers service is our number one business value, and that if we serve the community and do the job for the customer, that ultimately there will be a payoff. And a case for directing customers to a five percenter bank, if it makes sense for

them to bank there, if that's where they want to bank, we certainly have no objection. In fact, we would encourage it. After all, we would much rather have that customer go to a Sandy Springs or Chamblee or South DeKalb or Roswell Citizens & Southern Bank and to be served than to see them go to the Trust Company of Georgia or First National Bank. For them, it's a matter of convenience. It would be kind of shortsighted on our part. Frankly, we hope some day to have them all back in the same family.

Mr. Hodgson: May I have just a moment, Your Honor.

The other colloquy of the Court that I want to remind you of, Mr. Starks, was when the Court and Mr. Lane were wrestling with the dilemma of suppose the mergers are denied, what would then happen. I ask you that question and in your opinion? A. Well. Well, the Vice Chairman——

The Court: If you are going to ask that **[603]** question, I want to repeat, as I did yesterday, I'm not sure that that inquiry is relevant.

Mr. Hodgson: I'm not either.

The Court: What would happen if the merger were denied or this Court ruled adversely, the relevant question is what would happen absent any action, absent approval. In other words, would they stay the same absent any favorable action on an acquisition.

Mr. Hodgson: Absent this application never having been made.

The Court: That's right, what would happen.

Mr. Hodgson: I didn't perceive that distinction. That's always been my view that that's a much different question.

The Court: I think that's the relevant inquiry. I don't think—so far, I don't see the relevance of what would happen if this Court issued an adverse decision. That's the matter at issue.

A. Would you like to restate the Judge's question or have him restate it. I know I didn't know the answer to the other question, I don't know if I would know the answer to this one or not.

Q. Mr. Starks, I may be as chicken as you, I may turn you over to Mr. Kinkaid and make up my mind later.

[604] **Cross-Examination**

By Mr. Frisbie

Q. Mr. Starks, I would like to go back to some of your first testimony for just a second. When you were talking about the definition of a correspondent associate, in your words, you made some replies; as I understood your definition of a correspondent associate from your testimony, it was a bank in which the C&S was holding five percent, and the bank enjoyed the use of the name and the logo of the Citizens & Southern National Bank. You also talked about a few banks that were five percenters but not correspondent associates. What did you mean by that? A. I mean by that banks that we had a five-percent interest but were not correspondent associates.

Q. In your opinion, what relationship, if any, does the Bank of Woodstock have? A. The Bank of Woodstock, I would say, was a correspondent in which we have a five-percent interest. The degree of influence and control, I cannot testify to.

Q. Was the Citizens Bank of Hapeville known as either a correspondent associate or a five percenter? A. I think not.

[605] Q. The C&S Holding Company never, to your knowledge, owned five percent of the stock of that bank? A. They may have had five percent in the bank as a casual investment, I would say.

Q. What about the Bank of Stone Mountain? Would you classify it as a five percenter or a correspondent associate? A.

I would think in 1959, when we took a five-percent interest in the Bank of Stone Mountain, when Joe Hall went on that board, that bank was considered by us to be a correspondent associate. I don't think now that the board out there knew the stockholders of the C&S to be in control in the role of what we term a correspondent associate.

Q. What it boils down to then, actually, if you take a five-percent interest and designate it with the title "correspondent associate"; then it is a correspondent associate; is that correct? A. Not in my mind. As I testified in my testimony earlier, it is a question of mutual trust, mutual confidence and respect and interdependence.

Q. I believe you also testified that wherever the C&S logo would appear, this would mean that C&S services are available there; is that substantially what you testified to? **[606]** A. Substantially, yes.

Q. When you say C&S services, what services are you talking about? A. I'm talking about all of the C&S services. We have never made a designation between the services that are available in our branches and those that are available through our affiliates and correspondent associates. We do income taxes at both places, for instance, with a back-up central crew where such back-up is necessary. When you initiate new services such as the payment holiday, it is available to the associate correspondents or affiliates.

Q. Trust services are not performed at that particular branch? A. No, but they are available. We would not risk losing your customer to somebody else, let me put it that way.

Q. Then you would consider that if the C&S Bank of Sandy Springs offered one of its customers trust service that the service that bank in Sandy Springs would be offering would actually be the services of the C&S National, would it not? A. They would.

Q. And the same would be true with the tax **[607]** services you perform at each branch, say Sandy Springs, for instance? A. That service is being performed by Sandy Springs personnel. We trained people.

Q. Is that a Sandy Springs service? A. Well, it's a C&S service being offered by the Bank of Sandy Springs.

Q. Does Sandy Springs have an international department? A. Of course not.

Q. Would you consider services offered by the Sandy Springs bank to be yours in this field? A. I would consider it to be a service available through the Bank of Sandy Springs, by the fact that the president or an officer of the bank might bring the customer to our international banking service. Or, our international banking officer may contact the customer without the manager, but it would be at his suggestion; it would be his referral.

Q. What about checking-account services? Would that be a Sandy Springs service or a service of the C&S? A. It's considered a service of Sandy Springs. The deposit may be taken at the Sandy Springs office, but the computer work is done down on Mitchell Street.

[608] Q. Do you offer demand deposit accounting to your regular correspondents? A. Of course, for those banks, non-correspondent associate banks.

Q. Do you consider when they offer them through their banks that it is a service of the C&S National? A. I think it is merely an economical handling of the check or a handling of the deposits, that it is a service of the C&S, rendered by the C&S people offering that service. We had to be helpful to the customer; we have to compete on the basis of being problem solvers. That is still the C&S philosophy of doing business. It is just not the mechanics of pushing the button and stamping the receipt.

Q. And when income-tax season rolls around, I believe last year you had what you called tax shelters? A. Yes, we called them tax shelters and we had little tents in each office.

Q. Was one of them set up in Sandy Springs? A. Yes.

Q. And the earnings or revenue that come from this tax shelter, to which bank are they attributed? A. The income goes back to the Sandy Springs branch. The services that we perform, we charge the overall cost of the computer runs. We share the **[609]** expenses and they get the income. The expenses are pro-rated out and the difference is their profit.

Q. Are they staffed by C&S people? A. They are staffed by C&S-trained people.

Q. If a customer came to the international department for service in Sandy Springs, who would the income be attributable to? A. As the situation stands now, I would say it would be attributable to the international department. They did the work solely, so they would get the income.

Q. The same as the trust department? A. Yes. But we are trying to work out a method to compensate for this. Eighty percent of our business is through referral. We haven't done it yet, but we are looking for a way.

Q. How about services and income that originates from checking accounts? To which bank would this be atributed? A. They go to the bank who afforded the service.

Q. Would that be true with savings accounts and interest earned? A. True.

Q. I believe you mentioned that you had to get off of the board of directors of the Sandy Springs bank at one time. **[610]** A. I had to get off of all of them as an official member of the board. It made no difference in the role I played; I continued on as an advisor to the directors. This is what they called me.

Q. Why were you told to get off the board? A. Well, I am not familiar with all of the laws and regulations. I know orig-

inally, when we asked to go on these boards, it was felt there was enough wasteland between Sandy Springs and Atlanta and Chamblee so they would not be contiguous; however, later on it was ruled, I believe, they were contiguous.

Q. That was Section 8 of the Clayton Act? A. Yes, I believe that's what Mr. Hodgson says.

Q. Mr. Starks, you also testified as to what you did on the board of directors out there a little bit, you alluded to your functions out there on the board. To which banks did that refer? A. To any of the correspondent associates.

Q. Maybe my question should be were your functions and duties any different than as a voting director of the correspondent associate banks? Were they any different? A. No.

Q. You did mention you were on the board at Stone Mountain also? **[611]** A. That would be correct.

Q. And in 1968, did you accompany Mr. Hall and Mr. Lane to a hearing before the Federal Reserve Board in Washington, D.C.? A. I did.

[612] Q. During the Federal hearing, a question was directed to your group concerning the function of the directors on the boards of these banks. I will read to you and offer to you to inspect. Your reply to the question which was generally, "What were your duties there?" says, "after all, in most cases the men who were running these banks, particularly these smaller ones in the greater metropolitan Atlanta area, are representing a lot of talent, a lot of ability, but are of limited years of service in the depth of experience. We feel we give them this depth of experience by sitting on the board." This is on Page 26; I'm sorry.

Do you recall this statement, Mr. Starks? A. It sounds like me.

Q. Do you still believe that that is a true statement? A. Yes.

Q. For that period of time. And you have stated you were on the board at Stone Mountain and that was in 1959. Who was the president at that time? A. I was on the board in 1959.

Q. I beg your pardon. When were you first on **[613]** the board at Stone Mountain? A. Gosh, I don't know, '60 sometime. It was certainly after '63. I'm going to make a stab at it, maybe '63, '64 or '5.

Q. Can you remember who the president was at that time? A. At what time?

Q. The time you originally got on the board? A. I believe that Walter Gibson was the president at that time and subsequently became sick. We replaced him with Angus Parker.

Q. How many years of banking experience did Mr. Walt Gibson have? A. I guess he had the same experience for twenty years.

Q. Mr. Angus Parker, how much banking experience did he have? A. Angus had several years of experience, primarily, however, only in the installment-loan area or, basically, in the installment loan area. I should say not only——

Q. You were on the board at the Chamblee National Bank also, were you not? A. Yes.

Q. How many years had Mr. Harris been a banker? **[614]** A. Mr. Harris had been a banker a long, long time. However, there were areas where Mr. Hall or myself were still in the position to be helpful to him in areas for which he had not had direct experience.

Q. Now you also are on the board at Sandy Springs, at the C&S National Bank of Sandy Springs? A. Yes.

Q. How many years' experience has Tom Cook had at C&S? A. He had about twelve, if I recall correctly. Tom, however, as Mr. Lane I believe testified yesterday, was a liberal lender and needed help. He was also a little independent and hard-

headed and perhaps over-evaluated his capacities, and we found it necessary to try and encourage him not to make loans on dump trucks or against contractor retainage. Things you just don't do and not get in trouble.

Q. Mr. Starks, have you ever bought any stock in any of these five-percent banks? A. You'd better believe it.

Q. A good deal? A. It's a matter of definition. I have a little piece of every one of them.

Q. Did you borrow any money for these purchases? A. Indeed I did.

[615] Q. Did you borrow at a preferred rate? A. I did.

Q. Do you still have any of this stock? A. I do.

Q. I believe you stated that you went to the branch supervision department about 1963 or—— A. '63, '4, I can't remember exactly. I think about that time, organized it. I mean it didn't exist then.

Q. Oh, this was the original organization? A. That is correct.

Q. Mr. Herb Dickson was in that department also? A. Mr. Herb Dickson. He and I had a drink that night. We decided he would take the retail, I would take the wholesale.

Q. Was Mr. Lou Fortuna ever a member of the branch supervision department? A. I don't believe so.

Q. Mr. Starks, in an attempt to try to refresh your recollection—— A. Please do; it's lousy.

Q. Just a second. In a deposition taken by this Department of Mr. Louis J. Fortuna on August 7th of this year, on Page 63, I spoke to Mr. Fortuna and established that he went out to Sandy Springs back in September of **[616]** 1964. My question was that, "And prior to that, you were in branch supervision?"

This was in response to earlier testimony. Mr. Fortuna's answer is, "That is correct."

> Question: "What was your position in branch supervision at that time?"
>
> Answer by Mr. Fortuna: "Let's go back two years prior to that, when the National Bank was expanding branch operations in Atlanta, set up under a fellow named Herb Dickson, who was executive vice-president of coordination team. I, having been trained possibly in retail banking as such, was coordinator of retail banking in the Atlanta area, metropolitan area. This, then, particular division then came under Howard Starks. When he took over branch supervision, my function was working with Howard Starks in retail banking under branch supervision."

Does this refresh your memory at all? A. Yes, it's hazy, and, yes, I do remember there was an interim period in there when Bob Adamson left, and I believe this was it, that Lou did work with Herb on, particularly, some branch credits. I think that's right.

My mind is hazy on it; I really don't remember. **[617]** Branch supervision, basically, in those days consisted of me and Connie Nesbitt in the early days.

Q. Can you identify Connie Nesbitt? A. She was my secretary.

Q. That was my next question. How many people were in branch supervision at the time it started? A. There were two, and then John McIntyre, who was then vice-president in charge of the Tenth Street office, and Bill Mathis, in charge of the Howell Mill office, came in, and then we eventually supplemented the staff. I think the trouble over Lou Fortuna is a matter of semantics and definition. I don't think it's significant.

Q. I don't want to belabor a point unnecessarily; I do need to establish one thing. We established, or the deposition estab-

lishes, that Mr. Fortuna went to Sandy Springs back in '64? A. On my recommendation.

Q. Two years prior to that time is when the branch supervision department was started. Now that would place it about '62 or early, possibly, '63. A. This is a matter again of definition, what was branch supervision.

Q. Which banks came under the supervision of the branch supervision department? Not by name, by classification. **[618]** A. All of those in metropolitan Atlanta.

Q. All branches? A. Yes, and all affiliates and five percenters.

Q. Any regular correspondents? A. No.

Q. And at that time, in 1963 or '64, can we establish that there were only three correspondent associates banks in existence at that time?

Mr. Hodgson: Excuse me. Is counsel referring to the whole state or just metropolitan Atlanta?

Mr. Frisbie: I'm sorry. In the metro area.

The Court: Why don't you name them and let him see.

Mr. Frisbee: Sandy Springs, Chamblee, Stone Mountain.

The Court: Do you recall any more?

A. Well, there were—no, five percenters. Could I refresh my memory on some dates here? We are talking about the period what?

Q. 1963 or '64. A. Sandy Springs, Chamblee and Stone Mountain; of a variety, yes, I believe that's correct.

[619] Q. I don't believe you ever stated what the original function of that department was. A. It was responsible to the needs of the branch initially; then it was felt they would like a staff office in the bank where they would like to have one guy to whom they might have access for help and guidance in all mat-

ters, so that they wouldn't have to run all over. Essentially, they needed to have one guy to talk to, whether it was a credit or an operations problem.

Q. In 1963 and '64, we have established that you were the supervisor over that department. Would you have been the person that these branches and correspondent associates would likely come to? A. Mostly. We are a very loosely-knit organization. If somebody wanted to talk to Joe Hall or Dan Hodgson, they had a perfect right to.

Q. Did you ever go out and visit any of the five-percent banks? A. You better believe I did.

Q. How often did you do that? A. Certainly, with few exceptions, not less than once a month, and even more frequently whenever possible.

Q. Did you supply the Sandy Springs Bank with **[620]** a copy of the general operating guide? A. It was furnished; whether it came through my office or not, I couldn't say.

Q. Were they furnished at that time, in '63 or '64? A. I can't remember whether they were given to them. I'm sure people took them with them when they went.

Q. Were the correspondent associate banks, were they on the regular correspondence list in the same manner as the branch affiliates at that time? A. Yes.

Q. In looking through the general operations guide that has been furnished by the plaintiff in this case, the addressee portion is to the president of the bank or the manager of the branch or the president of the affiliate banks, but there is no mention in those years of any correspondence going to any of the correspondent associates. A. In what years?

Q. '62, '63 and '64. A. I can't testify to that for sure. I think most of the information that we furnished to the banks, to the best of my knowledge, was information to all correspondent associates.

Q. Well, my investigative manual is very large [621] and I may have overlooked one. A. I think the proof of the pudding would be whether they're in the files of those banks. I don't know.

Q. You stated in your direct testimony that these banks were recognized as being part of C&S. What do you mean by that? A. Referring to Sandy Springs and Chamblee, they were recognized by a lot of people as being organized by C&S.

Q. Did any of these, either the Chamblee or Sandy Springs, have a sign or put anything on their stationery to designate to the public that they were correspondent associates of the C&S National? A. Some of them did; some of them did not. I think, however, it was generally understood by the people that it was the C&S National Bank who took part in the opening. It was common knowledge that we had something to do with it.

Q. Are you referring to the people who took part in the blitzes? A. Yes.

Q. And those persons who did the blitzes, did they identify themselves as being C&S National employees on all occasions? [622] A. I couldn't say on all occasions.

Q. On some occasions? A. I know I had a badge on at the Chamblee opening identifying myself.

Q. How many people attended those openings? A. We had a system; we had two or three bank officers on the scene at all times during the openings.

Q. You said something about some of the banks having some manner of identifying themselves as correspondent associates. Can you give us any detail on that? A. No, I can't. I remember a sign, I believe, which designated one as an associate correspondent.

Q. Which bank was it? A. I don't remember.

Q. None of these banks bore the Citizens & Southern's name at that time, is that correct? A. That is correct.

Q. And the logo had not come into existence until what year? A. '68—'69, I believe.

Q. Are you aware that what is known as the bank of Stone Mountain had at least two signs that were placed at the city limits of Stone Mountain designating themselves as correspondent associates of the C&S **[623]** National Bank? A. At what time?

Q. In 1963 or '64. A. Those might be the signs I just recalled.

Q. You don't recall any other banks? A. I just recall seeing the sign. I don't know.

Q. When was the first credit audit by C&S National done at Sandy Springs? A. I can't testify to that.

Q. Does the bank supervisor take care of the credit audits for the correspondent associate banks? A. Yes.

Q. You stated earlier in testifying that in reviewing the audits—— A. I want to distinguish that credit examinations were functions of the branch supervisor, but operational audits were done by our auditing department.

Q. Those are coordinated? A. Those are not coordinated. They are just as big a surprise to me as the guy who is running the branch.

Q. Can you tell me when the first operating audit was? Do you know? A. No.

Q. Can you tell me if there was one prior to **[624]** '64? A. I would think so.

Q. Is it true that the problem at the Sandy Springs came to your attention only after an audit by the federal agency? A. I think that was part of it. I have the impression that we also

picked up some problems of our own, maybe from the supervisor's audit. I am not positive.

Q. This problem at Sandy Springs was considered serious by you and by the Sandy Springs Bank at that time? A. Yes, when it was discovered.

Q. And it was considered serious by the regulatory authorities? A. Later, yes.

Q. And serious enough that you had a special meeting called of the directors to raise more capital? A. Yes.

Q. How was that capital raised? A. By a capital note.

Q. It was purchased by whom? A. C&S National Bank.

Q. How did this credit problem develop out at that bank? Was there a bank supervisor supervising **[625]** the bank? A. You will note in '63 or '4 that the branch supervision that included the correspondent associates was being developed, and it was at my suggestion that we then put it in control, and so forth, the same as we had for the branches and the five percenters, because we uncovered these things.

Q. Prior to the creation of the supervisory department, there was no one looking after the correspondent associates? A. I think we looked to various people in the bank to look after that. That was one of the reasons we formed the department, because it was not being adequately done in our judgment.

Q. If you had been supervising and reviewing the credit at Sandy Springs then as closely as you do now, wouldn't you have discovered the problem at that time? A. I believe so.

Q. Then, it is fair to say that your degree of supervision over that bank is greater than it has been at any time before? A. We are getting better every year.

Q. Mr. Starks, when application for merger with Emory and East Point was filed after that time—— **[626]** A. I beg your pardon; I am not with you.

Q. After the period of time where an application was filed for permission to acquire the assets and assume the liabilities of each of the correspondent associates, East Point and Emory—— A. Okay, I am with you.

Q. After that period of time, there was a document called a supplement to the application that was filed, containing additional information about the bank. You may or may not be familiar with that document, but it purports to show how the Stone Mountain Bank was different from the others—— A. In the middle of '59, some of the original Stone Mountain people came to the C&S National and asked for help. They had credit problems, and they felt they needed someone who was more familiar with the day-to-day operations than they were.

Q. At this point was C&S guidance given to them in this first year of existence? A. No C&S guidance was given to them during the first few years of their existence.

[627] Q. Were you sitting in the courtroom yesterday, Mr. Starks? A. Yes, sir.

Q. Did you hear Mr. Hodgson state in his opening remarks there that the plaintiff has ignored the defendants' assertion that these five small banks, in name and in fact, are C&S Banks? They have been from the time they were organized in the eyes of their shareholders, the public, the regulators, their competitors, and their own officers and directors of Citizens & Southern Bank. This is what they are referring to, in name, and in fact, they are Citizens & Southern Banks and have been from the time they were organized. Isn't it a fair statement, based on your previous testimony you have just given, that for several years after the Sandy Springs and Chamblee were formed, after they were organized, they were

not C&S Banks in the eyes of the public? A. No, I do not think that is a fair statement. I think they were Citizens & Southern Banks in the eyes of the public.

Q. Do you think it's a fair statement to say for several years after Chamblee and Sandy Springs were organized, they were not Citizens & Southern Banks in the eyes of their competitors? A. I think they were Citizens & Southern Banks **[628]** in the eyes of their competitors.

Mr. Frisbie: Your Honor, could we have a ten-minute recess?

The Court: All right, we will take a ten-minute recess.

Q. Mr. Starks, you stated in your earlier testimony that one of the differences between a correspondent associate and regular correspondent was that a correspondent associate enjoyed the mutual trust, confidence, freely asked for and gave advice, respect, and inter-dependence, one dependent on the other; is that substantially what you said? A. That's right.

Q. If you take a regular correspondent bank you don't own any five per cent in, do you feel that you have mutual trust between those two banks, Citizens & Southern National and that bank? A. Yes.

Q. Do you feel the two banks have confidence in each other in their dealings normally? A. Yes.

Q. Do regular correspondent banks ever ask Citizens & Southern National for advice? A. Yes.

Q. Do you believe the banks respect each other? **[629]** A. Yes.

Q. Do you believe that there is an interdependence on the banks? A. To a degree, the correspondent associates, we are partners; we are married.

Q. But there is some interdependence among the banks in that one gets correspondent services and the other pays for it? A. To a degree, it's semantics.

Q. You also stated in your direct testimony, I believe your words were "later on"; I think you just referred to the time the branch supervision department started. You said later on, you started treating them the same as the branches, no different.

When did this start, when you started treating them no different than branches? A. Immediately after Sandy Springs; I would say after we discovered the problem at Sandy Springs. That's a fair statement.

Q. You also mentioned the wording "management control" as being one of the essential elements when we were talking about the differences between a correspondent associate and five percenters or regular? A. Right.

Q. Could you briefly define what you mean by **[630]** management control, in your own words? A. Management control result because we have a C&S-raised, C&S-trained, C&S disciple running these banks. It results because the board of directors has the confidence, the respect, the other things that I previously referred to, of the Citizens & Southern National Bank and we, in turn, in them, and there is a great deal of interdependence to a great degree not present in a correspondent bank.

Q. So then the management control you are speaking of, the management you are referring to is the management of the correspondent associate bank? A. No, no. Certainly that is part of it. What I am saying is that they readily accept the new services that we develop; they readily accept our suggestions and recommendations. They want and find useful the credit examinations and the audits that we do, the reporting that we have put in. It's the working-together business relationship. We, the Citizens & Southern National Bank control the role that this bank plays in the economy, the role that, the effectiveness that—

we increase the effectiveness of this bank much beyond the point that they could possibly do for themselves alone.

Q. Is this management control the same **[631]** management control you had over a branch? A. Other than legal, yes.

Q. Can you fire a branch manager? A. Can I fire a branch manager today or when I was in branch supervision?

Q. Can Citizens & Southern National fire a branch manager? A. Yes.

Q. Can Citizens & Southern fire the president of the Bank of Sandy Springs? A. I think it's done in a different way. The end result is the same. You go to the board; you say, "Hey, we have got a real problem here, and a divorce has to be", and they have the trust and the other things that I have been talking to you about. I have never had any problems accomplishing this if it were necessary. It's pretty damn drastic.

Q. How long did it take you to get Mr. Cook out of Sandy Springs? A. I would say there was probably a period of maybe three weeks, thereabouts. I talked to each board member individually.

Q. In the same Federal Reserve hearing we were talking about earlier, on Page 27, Mr. Lane testified:

Let's take Sandy Springs again. We had a **[632]** Citizens & Southern man out there as president. He got in trouble. We went to that bank board and said, 'This buy (I'm sure it means boy) can't cut the mustard.' They wouldn't replace him.

We went back six months later to the board and said, 'This guy can't do it.' They said, 'No, he is a nice young guy. We aren't going to get rid of him.'

Mr. O'Connell stated: "Was this nice young guy your man?"

Mr. Lane: "Yes."

Mr. O'Connell: "You had him put in there?"

Mr. Lane: "Yes, sir, it was a year later that the board that had its own chairman, I guess the largest stockholder in the bank, he finally said, 'You all were right. Give us somebody else. We have got to get rid of Taylor Cook.' "

A. My recollection of the time span and Mr. Lane's at that time are obviously different. I don't recall it being that long.

Q. You also stated earlier you were expecting about this referral of customers back and forth from Citizens & Southern National Bank to the correspondent associates? **[633]** A. Yes, sir.

Q. I believe you stated something to the effect that you encouraged them to use the five-percent banks because you would rather see them go there than to Trust Company or First National? A. Certainly, if a matter of convenience, particularly.

Q. Well, isn't it a fair statement to say that this occurs because you would rather have five percent of something in form of stock and the correspondent business rather than ninety-five percent of nothing? A. I wouldn't put it that way. I think that what we were really looking at here is the ultimate merger of these two banks that were all one in the same family and we eventually would recapture that customer. It was a short-term, unselfish thing that would ultimately bring us return.

Q. Isn't it also true in your own mind that, as Mr. Lane testified yesterday, an important part of the correspondent associate relationship is the fact of expectation of merger? A. I would say yes.

Mr. Frisbie: No further questions.

Redirect Examination

By Mr. Hodgson

[634] Q. Mr. Starks, Mr. Frisbie was reading you out of the Federal Reserve transcript of April, 1968 and called your attention to some of your testimony to the effect that you were representing a lot of talent and a lot of ability, the presidents,

but are of limited years of service. We feel we give them this depth of service sitting on the board. Then he talked, I believe, about Mr. Parker and Mr. Harris and some others. Do you recall this question by Mr. O'Connell? Indeed, he included Mr. Fortuna in the illustration, I believe, and the answer by Mr. Fortuna to this end.

Mr. O'Connell: For instance, in your bank then, we are speaking of the Sandy Springs Bank, if at a point in time an analysis of the loan portfolio of that bank indicated that you are very heavy in a particular long-term type of loan, and, in the judgment of C and S, that that portfolio should have a major adjustment to short term loans, to more local type loans, to meet the local business needs, and that suggestion is made, Mr. Fortuna, could you say, no, I won't change, and feel free that that decision would stick?

Mr. Fortuna: I think the approach is having had the experience of twenty years, **[635]** seventeen years with the Citizens and Southern, and realizing that their experience is greater than mine. I would certainly listen to counsel and we would make the change because we would all benefit thereby, because Citizens & Southern has given me a long-range point of view. I'm going to go the long-range way.

Do you recall that testimony? A. Yes, sir, I believe I do.

Q. Mr. Starks, have the five-percenter banks in the Atlanta metropolitan area ever been under any other organization in the National Bank than branch supervision? Any other organization? A. No.

Q. Mr. Frisbie was asking you some questions about the distinction between these correspondent associates here and an ordinary correspondent relationship there. I would like for you to distinguish for the Court this relationship to the extent you see it in two particulars, first with respect to the degree of reliance that the management of an ordinary correspondent places upon you and the degree of reliance that a correspondent as-

sociate places upon you with respect to management. A. Well, I can't think of an instance unless **[636]** we were called upon to give up a man for, in an emergency period, where a correspondent would rely on us for management, other than to assist him with investments and that sort of thing.

Q. I ask you the question in reverse style and ask you with respect to responsibility for furnishing management from the point of view of yourself to compare that responsibility or sense of responsibility, to compare an ordinary corerspondent to a correspondent associate. A. From a branch supervision standpoint?

Q. Yes. A. None.

Q. You find no distinction between—— A. No, I misunderstood your question then.

Q. What distinction do you find with respect to responsibility to furnish management on to a correspondent, on the one hand, and to a correspondent associate on the other? A. Well, one, if we are asked to try to find somebody to help run a bank, if this is the point you are trying to make, and part of the correspondent, this is one thing. We have an obligation more than moral to furnish management for a five percenter or correspondent associate.

[637] Mr. Hodgson: No further questions.

Mr. Frisbie: We have no further questions, Your Honor.

Mr. Hodgson: We call Mr. Joe Hall.

Whereupon,

JOSEPH HALL

was called as a witness by and on behalf of the defendants and, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Hodgson

Q. State your full name for the reporter, please, sir. A. Joseph Albert Hall, III.

Q. What is your position with the Citizens & Southern, Mr. Hall? A. First vice-president of the bank and president of C&S Holding Company.

Q. When did you become president of Citizens & Southern Holding Company? A. About two and a half years ago.

Q. Before that, what was your position with the Holding Company? A. Well, last twenty, thirty years, I guess I had been—started out as assistant secretary-treasurer of **[638]** the Holding Company, and then secretary and treasurer, and vice-president, executive vice-president and president connected with the Holding Company, with the Holding Company as well as the comptroller operations in the bank.

Q. Have you been entirely in those two offices throughout your entire banking? A. Just about.

Q. And you have been there at least since before 1959; is that right, Mr. Hall? A. 1935.

Q. Let's start, Mr. Hall, with respect to some of these banks and the beginnings of their relationships with Citizens & Southern National and the Holding Company and ask you to add whatever you think you can to the development of these relationships as to what they were; and let's start with the bank out at Stone Mountain first.

Tell the Court what you know of it. A. Well, where I got in on it was with a group from Stone Mountain came to us and said that they were in trouble. This was in 1959. This was a bank that had been formed about two years previously. I didn't really have any direct knowledge of the formation of the bank beyond the fact that they asked us in the **[639]** comptroller's department to see if they could find them a vault door, I believe it was. **[640]** But in '59 they came to us and said they were in trouble. The bank was making money but losing some credit, so Mr. Lane suggested to them that the C&S Holding Company take a five-percent interest in it and suggested I go to the board and try to get somebody out there to take over the branch, since the main problem at that time was credit losses. Since this was a consumer-oriented area, we picked the man most experienced in our bank in that area of consumer loans, and we asked him if he would go there. After we solved the credit problem, the bank turned around. It was simply a thing of stop losing money from credit losses.

Q. Who was the officer who went out there at that time? A. Walter Gibson.

Q. What did you do next with that bank? A. Well, I worked with the directors from time to time.

Q. Did you go on the board in '69? A. I went on the board in '59. I tried to sell them on the things that I thought were right for the bank. It got to the point where I felt it would be better if we had two C&S voices on the board instead of just one. I asked Howard if he would join me, and **[641]** I asked if they would accept both of us, and we both continued to serve as directors and did so until—I forget which one of the regulatory agencies raised the question about a regulation, whether or not we were in violation of that regulation what had to do with not being officers or directors or employees of a member bank if the two are in a contiguous area. I believe the Feds here in Atlanta interpreted that we

were now related, and we simply resigned. I believe that was in connection with the hearing we had in '68. When that took place, it was sort of a by-product of the hearing.

Q. Mr. Hall, what was your and Mr. Stark's relationship with these board members at Stone Mountain, how did you get along? A. Well, I thought we got along with them pretty well. Apparently we didn't, apparently we didn't do the job we should have done because when we talked about whether they wanted to join us permanently, they turned us down. Apparently they had found somebody else, and we just parted company.

Q. Let me ask you this: do you sit on the board as a director or as an advsor to the directors through the Atlanta area on the five-percent banks? A. Yes, the Fayetteville, Tucker, I don't know, **[642]** several others, and some throughout the state, as I recall.

Q. How would you compare the relationship that exists between yourself and those boards and those various banks and Tucker? A. Well, in Stone Mountain the directors were not picked by us. In Tucker, for example, as were most of the directors in the other banks, they were C&S-oriented directors. At Stone Mountain they were C&S-oriented. They were more —I think most of them had connections with other banks that were closer than any connections they had with us. The only reas I think they came to us was because of Mr. Lane. My recollection is most of them dealt with the Fulton Bank out in Decatur because we did not have any. We did not have any in Fulton out there when they probably started in the banking business. I think probably at the beginning of their business, Fulton was the closest bank.

Q. How did the stock ownership at the Stone Mountain Bank compare in stock ownership in the other five-percent banks in the Atlanta area? A. Well, in the Stone Mountain Bank it seemed to me the profit-sharing owned five percent, and

the Holding Company owned five percent. It seemed the **[643]** shares of stock were bought from Sonny Kellogg. I know when I went on the board I got one hundred shares from Mr. Horne. He was an Atlanta man, not from Stone Mountain. All throughout the period we were involved with them, we had trouble getting stock whenever anybody came in. When Howard or Walter Gibson came, it was a fight to get stock because nobody wanted to give it to us.

Q. How does this compare with the stock ownership in the other five percenters? A. We never had that problem. Probably in most other instances we were able to allocate the stock out and it went to enough C&S people so there was no problem of a new man coming in and getting stock for him. Maybe somebody was leaving or was in some way connected with the C&S in some way.

Q. Mr. Hall, I hand you some sheets which are sheets that have been marked in this case and identified as Defendant's Exhibit 269, with the exception of one sheet which I will hand to the clerk for inclusion, and I believe that's been identified as 334. Mr. Hall, these purport to be sheets analyzing stock ownership in these various five-percent banks, and I am going to ask you to look at the last column there and identify the percentage of the stock owned by the various categories. **[644]** And let's just start with the Park National Bank and ask you the percentage owned by the officers, directors and employees of the National Bank and affiliates. A. 18.31%. And the officers, directors and employees of the C&S Park National, 31.34.

Q. And the total of those two is approximately how much? A. 49%.

Q. And the customers of the National affiliates? A. 38.71.

Q. And the customers of Park National and the other five percenters? A. 10.7.

Q. Do you have knowledge of whether or not a significant number of these customer stockholders were stockholders who were solicited by Hazelrig? A. I believe so. My recollection is that we made a survey of all of the stockholders and asked how many of them expected to merge when they bought the stock, and I believe we got back, as I recall, something like a 98% reply. So these were people who were solicited by Bob Hazelrig and his group, and that is how the stock was sold.

Q. Turning then to Chamblee, looking at the second page, the last column, I will ask you the same **[645]** question as to the officers, directors and employees of the National Bank and affiliates. A. 12.56.

Q. And then officers, directors and employees of C&S Chamblee and other banks? A. 16.64.

Q. And the rough total of those two? A. 29%.

Q. Would you say of the C&S affiliates, 29.4, and the customers of Chamblee and the other five percenters? A. 41.40.

Q. We referred a moment ago to a survey that was taken with the shareholders with respect to obtaining a consent or a desire to merge. What is your recollection of the results of it there at Chamblee? A. My recollection is that in all but five or six instances, they were in favor; this was something in excess of 95% of the people said that was the original intention, that it would ultimately be merged. When they voted on the merger, I don't think there were more than one or two individuals who didn't vote in favor of it.

[646] Q. These figures were exhibits which were submitted to the application to merge; is that right? A. Right.

Q. Turning then to Tucker, Mr. Hall, I ask you to look at the last column, which is December 31 of 1970, officers, directors, employees of the National Bank and affiliates. A. 41.48.

Q. Former officers, directors and employees of the National Bank and affiliates. A. 6.51.

Q. Officers, directors, employees of the Citizens & Southern of Tucker and other five-percent banks. A. 9.97.

Q. What is the rough total of those three? I wouldn't ask you if you had not been a comptroller. A. About 58%.

Q. Customers of National Bank and affiliates. A. 4.72.

Q. Customers of Tucker and others, five-percent banks. A. 37.32.

Q. Who was instrumental in placing these shares of stock, Mr. Hall? A. Bennett Brown, Mills Lane, Joe Hall.

[647] Q. Turn now to North Fulton Bank, Citizens & Southern North Fulton Bank at Roswell, and I ask you in the last column, which is the second page, June 30th of 1970, Category A, officers, directors and employees of the National Bank and affiliates. A. 17.82.

Q. Former officers, directors and employees of National and affiliates. A. 2.63.

Q. Officers, directors and employees of North Fulton and other five percenters. A. 25.36.

Q. What is the rough total of those three? A. 45.

Q. Customers of Citizens & Southern National and affiliates. A. 49.48.

Q. And customers of North Fulton and other five percenters. A. 4.73.

Q. Look at Sandy Springs next, which is much longer. I believe you have to go to the second page, officers, directors and employees of National and affiliates. A. 1971?

[648] Q. Yes, sir. A. Well, 10.7.

Q. Former officers, directors and employees. A. 13.1.

Q. Officers, directors and employees of Sandy Springs and other five-percent banks. A. 28.1.

Q. What is the rough total? A. 51.52%

Q. Then customers of National and affiliates? A. 24.3.

Q. And customers of Sandy Springs and other five percenters? A. 23.7.

Q. And then our most recent baby, South DeKalb, officers, directors and employees of National and affiliates. A. 46%.

Q. Former officers, directors and employees of National and affiliates. A. 2%.

Q. Officers, directors and employees of South DeKalb and other banks, five percent. A. 18%

Q. Rough total of those? **[649]** A. 66%.

Q. Customers of C&S National and affiliates. A. 14%.

Q. And at South DeKalb and other five percent? A. 40%.

Q. Mr. Clerk, would it be easier if these stayed all together or just the one sheet?

The Clerk: The one sheet, please.

Q. And I believe that was Fulton—National. We have talked then about Stone Mountain and its share ownership. Let's turn to the next one in chronology, Mr. Hall, Sandy Springs.

What was your direct part in the organization and operation of that bank? A. Well, working in the comptroller's department, we were responsible for the physical location, insurance, those kind—audit control, those kinds of things, and so I worked, or some of my people worked with Tommy Cook in locating the branch, remodeling the store that we decided on renting. We worked with getting insurance for them. We did about the same things we had done several years previously when the Citizens & Southern Holding Company had organized

a bank over in Augusta. We did basically the same things with them we had done there.

[650] Q. Incidentally, talking about the bank over in Augusta, whatever happened to it? A. I'm talking about the Augusta National Bank, which was ultimately merged into C&S National Bank.

Q. When was that? A. Oh, I can't remember, really. It's been——

Q. Been within the last fifteen years? A. I believe so.

Q. How were the shareholders and directors at Sandy Springs determined? A. Mainly the impression I got was that they were picked by Mr. Lane. I can tell from the list of them that they were his business associates or personal friends.

Q. Have you anything that you could offer with respect or additionally to what Mr. Lane and Mr. Starks have testified about the severe credit loss that occurred out there and resulting possible capital impairment? A. No, it's rather vague in my mind. The only thing that I think I could add is the fact that there was some question about why there wasn't a credit examination out there. I'm not sure it wasn't or not, but I do know this, that there is a requirement under law that the directors have to conduct what is called a directors' examination. This consists of a **[651]** verification of the assets and liabilities of the bank. It has nothing to do with an appraisal of the assets. Credit review is an appraisal, and while we now make credit reviews, we didn't at that time, and one of the main reasons was because we were not—it was not a requirement, as far as directors of Sandy Springs were concerned.

We were giving them the things that we thought they should have, plus the things they were required to have, and we subsequently found out that we needed to give them all credit reviews, and we do that now.

Q. This was not the time of change of relationship of any kind? A. No.

Q. The relationship had been the same from the beginning as it is today? A. Except that we give them more services now because as we find that they have needs, we try to fill the needs and the same thing would go with our own branches. But we find that we need the credit reviews, and we put them in our own branches. As experience of the people changes, why we have to put more or less control on them.

Q. What was your direct experience and what is your present recollection of the beginning of Chamblee? **[652]** A. Well, there was a gentleman by the name of Les Bailey who was chief national bank examiner here in Atlanta, which is the same thing that's now called Regional Administrator of National Banks. He had come from California. He was a branch-banking man. He was a very outspoken person. He would always chide us about why we didn't do something about the branch-banking laws, why we didn't do something about fulfilling the needs of the people in the area outside of Atlanta, and he is the guy who told us he thought that maybe a branch or bank in Chamblee would be a good idea. And also he mentioned the Belvedere area. In fact, at Chamblee, he said that he thought that would be a good place for the C&S to go. The only way we could go was with a five-percent interest.

We took his advice; we went along with his advice, and we got together with this group at Chamblee. We got together also in a group at Belvedere. Unfortunately, the gentleman passed away before he could approve the application, so that when the applications were submitted to the Comptroller of the Currency, they turned down the branch.

Q. Of Chamblee? A. Of Chamblee; turned down completely the one at Belvedere. But we did get the bank at Chamblee and **[653]** about—I don't know, two years, year or two years later, we got permission from the Comptroller of the Currency to open

a branch of the Chamblee Bank on Buford Highway as he, as Les Bailey has originally predicted was the thing to do. The Belvedere location, it was some four or five years afterwards.

[654] Q. I will come to the Belvedere later. I am taking these chronologically and I am trying to keep them in sequence. With respect to Chamblee, Mr. Hall, what recollections do you have on the comptroller's office with respect to buying and warehousing land for a premises there? A. I remember working with Hubert L. Harris. He went out there to pick a temporary location. We rented a storefront, I believe on Peachtree Road. It runs along the side of the railroad tracks. It seems like we got a teller counter from some of our old banks somewhere and fixed this thing up temporarily. I thought we did a pretty good job, and inexpensively. We began to look for a permanent location, and we ultimately decided upon Peachtree Industrial Boulevard.

Hubert came back to us and said we needed a little more space, and we talked to the people who owned the property next to it to see if we could use part of it. We bought it and added it to what the Chamblee branch originally needed and held the rest of it, which was ultimately disposed of with the approval of the Chamblee bank.

The C&S Holding Company bought the original land and held it for the Chamblee bank. They then held onto the unoccupied portion until a purchaser was found who was acceptable to the Chamblee bank, **[655]** and we sold to that purchaser.

Q. What recollection do you have with respect to underwriting salaries at Chamblee? A. We paid Hubert Harris for six or eight months for two reasons. One to help get the bank on its feet and, secondly, because we had to get the bank's profit-sharing plans formally approved. We didn't want to lose any continuity to the profit-sharing, and it was easier to keep him on the bank payroll.

Q. What is your recollection of how the Tucker relationship came about? A. Well, Tucker was a place that needed a bank. For a long time, Cofer had a bank out there which was being operated really as an adjunct to his lumber supply business. I remember going out to Stone Mountain as a director and would go by Belvedere and my mouth would water. That was going to Stone Mountain. And on the way back, I would go through Tucker and my mouth would water going through Tucker. These were two areas that needed a progressive bank.

Somebody else obviously felt that way, too, because another group got together in Tucker and made an application for a bank charter. Mr. Cofer realized he wasn't going to be able to compete with them; he either had to give up his lumber supply business or **[656]** give up the banking business or get somebody to run the bank. He decided on the third, and he came to Mr. Lane and asked him if we would be interested in trying to run the bank. He didn't think his company could compete with the new bank.

Of course we accepted, and we bought 80% of the stock and put it in the hands of the C&S officers, directors and employees. We changed the directors, and I think we named three or four new directors to the board. Bennett Brown was with the board as a representative of the C&S Bank, and again, later, when Bennett left to go to Augusta, I went to the board. And it's been a very good relationship. I think it has grown from $3,000,000 to now where it is a $35,000,000 bank.

Q. Did you warehouse any land for this bank? A. Yes, when we were discussing acquisition with the Superintendent of Banks, we talked about the area that looked like to him might be a good place for a branch. I went along with Bennett to look at it with him and I thought after I saw it the first time that he had bought a pig in a poke, because it was the biggest hole I ever saw in my life. We had already bought it, and I think it was about two and one-tenth miles from the main office of

Tucker, and the law only **[657]** allows you to go two miles. But, fortunately, they put the expressway right in there at the two-mile mark, so the Superintendent of Banking allowed us to technically exceed the law by about one or two-tenths of a mile. We bought it and held it in the Holding Company until they were ready to put the branch in.

Q. Did you help Tucker with respect to any of its capital needs? A. It seems we in the comptroller department worked with any of the five-percent banks with respect to capital problems. We would counsel them as to what we thought was the best, a straight note, a convertible or a debenture or straight capital. I believe that we got a debenture out there in Tucker.

Q. Okay, now let's go to Belvedere. What is your recollection of that? A. In about 66, it seems to me, we came back and got a group of people together, men, and made application for a bank there at the corner of Columbia Road and Memorial Drive.

This time we went to the Superintendent of Banks and we got a favorable reaction from him and we were able to open that bank on the corner. My recollection is Celeste Dupree and Bill Jones worked on picking the directors and stockholders. We operated **[658]** in that location for quite some time, and then after that I believe we moved maybe a block or so away because it really was very congested. It was not the best location. While it was very visible, it was not the best in the world for getting into and out of, and as it got bigger and subsequently merged, I think was sort of really an important point to us. We maybe misread the sign, but this was a bank that asked to be merged, I believe it was in '70 or '69, and we asked that it be allowed to be merged in with the bank.

They asked for an opinion letter from another agency and the Justice Department. The Justice Department, I don't know what the exact words were; it's somewhere in one of these exhibits. The Justice Department felt this was no more than a

corporate reorganization; that this had been a branch bank, that there was no difference between this and a branch bank, and therefore there should be no lessening of competition.

We bought this bank and operated it as the rest of the five. We thought what we had done was right and that we would be able to merge. That is why we took an active interest in getting the bank, because we felt the position was that these banks could be merged.

[659 thru 662] Q. You did not make the effort with the other five percent banks in 1969 that you did make in '71? A. We did not merge them at that time. The only reason we could merge Belvedere at that time was because of a change in the definition of a village, as far as the state banking law was concerned. By the change of definition, we were able to bring in the banks in Avondale and the Belvedere bank, which was defined as a village. Therefore one could be the branch of it.

Mr. Hodgson: Judge, I have finished a section of the testimony related to these. There are some general matters I wish to cover with the witness which will take maybe fifteen to twenty minutes, so now might be a good time to break for lunch.

The Court: We will now recess for lunch and resume at 1:45 p.m.

(Whereupon a lunch recess was had.)

[663] **Direct Examination** (continued)

By Mr. Hodgson

Q. Mr. Hall, will you resume the stand, sir.

Mr. Hall, can you tell the Court what steps were taken, what activities were engaged in to keep the various banking regulators informed of what was going on? A. Most of these banks were, that we were involved with, I guess, right now are state non-member banks and as such, there is a provision in, I be-

lieve, in the law or maybe it is one of the Superintendent of Banks' regulations, I believe it's FDIC regulations, that you have to keep them informed of changes in ownership. Of course, on a new bank, they know all about it.

We talk to them quite frequently, the Superintendent of Banks, the FDIC, Federal Reserve, the Comptroller of the Currency. I think every one of them will tell you that they are thoroughly familiar with the operations of all our five percenters.

Q. You say you keep in touch, tell the Court, if you don't mind, how you keep in touch with the Commissioner of Banking and Finance, who was formerly known as the Superintendent of Banks, State of Georgia. A. Well——

Q. As a routine matter. A. I would guess that we call on them once every **[664]** couple of weeks, that I remember an instance within the past two years where he asked us if we would not, if we would ask the people in the five per cent banks to stop coming to see him, that he was tired of listening to their stories as to what they wanted to do when he felt that we could tell them things that would be helpful without—that would be questions in his mind without having to send them back. And we told everybody at that time and every one of the associate correspondents that we would appreciate it if they would not contact the Superintendent of Banks any more about any matters without talking with either me or Rountree's Youmans. It was just a matter of him not wanting to repeat something to every one of them on every application. For example, if they wanted to get in a real estate holding company, there were certain things that he knew that had to be done. He told me, he told Rountree he didn't want to have to tell ten others the same thing. He would rather that they would come to us and let us tell them.

[665] Q. Now, when you say "he", to whom are you referring? A. Mr. Jackson at that time.

Q. Mr. W.A.M. Jackson? A. Right.

Q. Then superintendent of banks? A. Right.

Q. You said you would make calls every few weeks; did you ever otherwise contact Mr. Jackson? A. Oh, yeah.

Q. On what, for what sorts of—— A. Well, anytime anything would come up about five-percent banks or our bank or our affiliates that was under his jurisdiction, why, we would call him.

Q. How about the regional administrator for the controller of the currency, formerly the chief bank examiner, the same sort of relationship or not? A. Oh, yes. Of course, there weren't as many in the banks that were National banks. I think the only one that was involved here was Park National. And, of course, anything that was involving it, one of us talked to Joe Ream or John Gwinn or Les Bailey, depending upon the particular time.

Q. How about with the Federal Reserve Bank and Federal Reserve System? A. Of course, we, as you know, had an extensive **[666]** hearing at the Fed, and that thing went on for a period of about two years. It started in 19—I believe it was at the tail end of 1966, one of the things that we are required by law to do is to make an annual report. Every holding company, every registered bank holding company is required to make an annual report to the Federal Reserve Board, and it was at that—in 1966, in our report, one of the requirements of the report is to list the loans, and there were a number of loans in there listed in various individuals' names as agents. And they asked us what these agents were, and I remember telling them that this is just a separate designation of the individual, separate and apart from himself; that we just did this to facilitate the brokerage of the stock, where we might acquire the stock in a bank and then parcel it out to other people. The sellers usually wanted their money right away, and it sometimes was impossible to get the money from the ultimate buyers immediately. Usually—or not—I don't guess "usually" is the

right word either. Frequently we were able to close these things out in a matter of months. There were one or two instances where the stock was held by the holding company in an agent's name for a period in excess of a year. They wanted to know if we felt like that through these agencies we controlled the **[667]** banks. I told them that is a question that they would have to answer, but in my opinion, good management controls every bank, because management always sends out, in a bank, proxies to their annual meeting, and I believe in most of the cases 95% of the stock is set—is voted on by proxy, and proxy has been—the attorneys have been named by the management, and, as a result, management, in effect, controls that bank. I said I can't tell you whether this is control or not. You will have to decide it. But, as far as I'm concerned, when you go down to the bank in——

Q. Take—— A. Tucker.

Q. Take Tucker. A. That the president will send out to the stockholders proxies, and the stockholders will execute them and send them back. At the time of the annual meeting, he will have proxies for maybe 95 to 98% of the stock, and as a result he, in effect, through this is able to control the election of the board of directors and, through that, to control the bank.

Q. Now, whether or not that is the control that they talk about in the Bank Holding Company Act, I am not qualified to answer, and I don't think—it doesn't seem to me like they have ever answered it either.

[668] Q. Well, proceeding with this hearing you were speaking of, when they found the shareholdings and the names of individuals as agents, what happened as a consequence? A. Well, we finally—they asked us to come to Washington. They asked us to give them a lot of information, which we gave them. We went to Washington and spent a day there with the Federal Reserve Board. Invitations to the hearing were extended to the Federal Deposit Insurance Corporation, the Controller of

the Currency, the Justice Department and, of course, the Fed was there itself. I think everybody had a representative present except the Controller of the Currency. I don't know why he didn't—didn't accept the invitation.

We spent the best part of a day talking with members of the Federal Reserve staff, and went over in detail the relationship of the C&S National Bank and the C&S Holding Company to these banks in which we had a five-percent interest. As a result of the hearings, they concluded that they did not—or we were not in violation of the Bank Holding Company Act. They asked us, in going ahead, that when we acquired—when we had these similar situations to develop, what usually happened was that a bank would get to the **[669]** position of where their executive officer was maybe sixty-five, seventy, seventy-five years old, and they needed a replacement. One of the hardest things in the world for a small bank to do is keep people, so that when the senior officer leaves they have an adequate replacement. And about the easiest way I can explain it is, in a big organization you will have maybe twenty steps between the salary of, let's say, $10,000 and $40,000. The ten thousand being the lower officer and the forty thousand the top of the—the president of the bank. Whereas, in a small bank, you might not have but five steps, and it is very difficult for the small bank to keep, to get and retain qualified replacements because the guy that is in the No. 2 spot can move somewhere else and get a better paying job, and so he does.

Consequently, many banks, many small banks come up to the situation where they don't have a replacement for their senior officer, and this is the—these are the instances in which the banks throughout Georgia have come to us and asked us if we would supply it. **[670]** When we did that, we always made an offer to acquire five per cent of a stock and then to place any other stock, any other stockholders that wanted to dispose of, we would, in effect, guarantee that we would place it somewhere.

Q. At as good a price? A. We always offered everybody the same price. This is another one of the things that wherever we did this, we were sure that every stockholder was offered the same per share of sale, that they would place it somewhere. What we had been doing previously, previous to our meeting in Washington was to make a loan in the Holding Company to somebody as agent and then as the stock was sold out, it would be credited on that note. They asked us to stop this. They asked us to go to—in the future, so through some kind of a stock broker if we had to hold the stock more than overnight. They asked us also to report any of these instances as they occurred.

Q. Did you do so? A. We did so, yes. We had, as a result of whenever we did become in one of these situations, we would always notify them just by letter saying that such and such a bank asked us to do such and such. We were going to acquire so much stock and so forth, so on. It was also at this meeting that, well, one of the results of this is, I always felt and actually, the counsel, Federal Reserve [671] expressed to me, he felt like we had control. Of course, control is—I use that word very hesitatingly because it means so many different things. He had expressed the opinion that we probably controlled these banks although we were probably not in violation of the Federal Bank Holding Company laws dealing with control. As a result, he asked Congress to include in the Bank Holding Company Act a provision where a situation like this, that the bank would be deemed to be controlled by the holding company, and this is the way I look at our associate correspondents now.

Q. How do you look at them as being controlled or not controlled? A. As being controlled within the definition of the Bank Holding Company Act. We do not control the stock or voting of the stock, but as I see it, one of the provisions—one of the provisions about it is that if a holding company exercises substantial influence over the management of the bank,

it, I think it says, it's deemed to be under the control of the bank and should be classified as a subsidiary. This is one of the things that I say is one of the distinguishing characteristics of an associate correspondent. It's one of the banks that would be classified as a subsidiary under the Bank Holding Company Act.

Q. Mr. Hall, going back to your keeping the **[672]** regulators informed, you got into at this Federal Reserve hearing. What was the final result of that hearing? A. Well, as I say, they said everything we were doing was all right as far as the Bank Holding Company Act was concerned. There were no violations. They asked us, though, going ahead, to do certain things to handle any future acquisitions through a broker. Two, there was a few stocks they asked us to dispose of which really had nothing to do with the hearing. It was just a by-product.

Q. Do you recall whether or not at the outset when Mr. O'Connell, who was, I guess, he was then Deputy General Counsel with the Federal—— A. Right.

Q. ——before Mr. Heckstall left, do you recall his mentioning anything about the commercial and savings merger in connection with the hearing? A. I think that there were a number, probably a number of reasons why they called—had the hearing. One was the question that came up as a result of our listing the loans in the annual report. The other is that commercial and savings bank merger in Augusta, as I recall, one of the parties, maybe it was the Justice Department, had cited the Federal Reserve on whether or not they had enforced the Bank Holding Company Act. Maybe we were in violation of the Bank Holding Company Act, when we originally **[673]** acquired the interest in Commercial Savings Bank in Augusta.

Q. Was that bank eventually merged? A. It did merge, yes, we merged it with Citizens & Southern National Bank in, I believe it was 1968. I believe that's right.

Q. Without any problems? A. No, no problems. No.

Q. Mr. Hall, in addition to routine calls and keeping in touch, you might say, with the various regulators, I presume you also kept counsel advised of what was going on, general counsel? A. Oh, yes.

Q. Legal counsel. A. Yes.

Q. Let me ask you some opinioned questions, Mr. Hall. From your experience in this position, how would you compare a definition in the Citizens & Southern Bank and system, the relation between that bank and an ordinary correspondent in relationship with one of these banks you call a correspondent or associate correspondent? A. Well, I say that there are three classifications. The easiest, simplest way for me to say it is that there are three different groups of banks. There is a correspondent bank, there is a super-correspondent bank and there is an **[674]** associate correspondent. Now the correspondent is a regular bank, just a regular correspondent, just like everybody else everywhere has. The ones I call super-correspondents are ones that get these extra services that we offer them, but which we do not feel will, which have not committed themselves to being interested in merging with us at some later date. And the correspondent, associate correspondents are the ones that receive all the services and we have also got some kind of understanding with them that if the law ever allows it, they will merge into the Citizens & Southern group, if possible. So, it's really fairly simple in my mind because that puts in the classification of super-correspondent banks like Woodstock and Cartersville and Fayetteville and Seynoia, some of the places where there is a single large block of stockholders and who have not expressed a wish to become a part of the C&S Bank at some point in the future.

Q. Now you have mentioned two elements then. One is mutual intention, if possible, to merge? A. Yes.

Q. Another related to another block of stock? A. Yes, as far as correspondent associates are concerned, I believe there are

four elements that seem to me to be present. Number one, there has to be a small, no large block of stock that's held by any one individual **[675]** or group of individuals. The large stock has to be owned by the Citizens & Southern Holding Company, which is 5%.

Then there has to be an understanding that if and when it is, becomes possible, that this bank will merge into the Citizens & Southern family bank, then there has to be a determination, there has to be—there has to be a bank which would qualify as a subsidiary under the Bank Holding Company Act. Let's see, there's one other, I can't think of it right now.

Those are, it's got to be classified as a subsidiary. It's got to be a bank that will merge with us. It's also got to be a bank which understands that we are responsible for its management, subject to the veto of the Board of Directors. I think those are the four things.

Q. Do you have an opinion as to whether or not Citizens & Southern National Bank or Holding Company, or both, have working control over the management and policies of these five banks? A. In my opinion they do.

Q. In your opinion, is it exercised? A. It is.

Q. Is it accepted? A. It is.

Q. How do you compare that with control, working control over the management and policies of the bank at **[676]** Stone Mountain? A. Well, there was a lot more hesitancy and a lot more delay, for example, they had a capital problem out at Stone Mountain. We talked to them about what we thought was the best thing for them. They just insisted that they didn't want to go twenty-five years on a debenture. They wanted a five year debenture. I never could convince them that it was to their advantage to go ahead and take a twenty-five year one.

When we did the same with Tucker, we had no problem at all. They immediately accepted exactly what we recommended. I

think the way the name got on at that bank, Mr. Lane explained it yesterday, Mr. Cofer insisted that he be allowed to put the name Citizens & Southern on the Bank of Tucker. When they did, I informed the Board of Directors of the Bank of Stone Mountain that Tucker was going to change its name to Citizens & Southern Bank of Tucker and told them I wanted them to know before it happened, that if they wanted to use the name and they were willing to do so, we were willing to do so. By, I believe it was six months to a year later when they came back to us, they said, we would like to use the name. We said, "Okay, you can use it." Again, it was something they took their own time about doing.

[677] A. (Continued) When we had to move the—when we outgrew the quarters, the rented quarters in which we were located in the city of Stone Mountain, our research department made a study, survey of the Stone Mountain area, and decided on one particular geographic location which we thought was the best one for a bank. We recommended to them that they put the new bank on that spot. They did not choose to accept our recommendations and put it on another lot somewhere else. But it was all—I mean these are just three examples. Ultimately, they did most of the things, but it was always much slower and some of the advice we gave them was not even accepted, not that there was any hard feelings, as there wasn't, and, in fact, when they finally said that they didn't want to merge in with our bank, we went—I went back to the board and told them, if this is what they didn't want to do, it was perfectly agreeable with us to leave the situation just exactly like it was then.

We would continue the five-percent relationship as we had operated over the last, at that time I guess it was the last ten or eleven years, but apparently they had already committed themselves to some other course of action.

Q. Mr. Hall, there was some conversation **[678]** yesterday with Mr. Lane in which the question was asked, and I believe I

may have asked the question in another way, why would you assume this responsibility toward these little things and take only five percent of the stock? A. Well, Howard——

Q. Well, let me ask you an obvious question, if I may, first. Why didn't you take more than five percent? A. We weren't allowed to.

Q. By law? A. That's right, except in the instance of—I believe in the instance of Sandy Springs, and at that time I believe the law was fifteen percent. However, at that time there was an indirect control provision in the law that said that officers, directors and their wives, ownership by officers, directors and their wives, would be attributed to the company and, as a result, our counsel, your associate, Mr. Henry Miller, told us that none of us could buy any stock in the bank at Sandy Springs. So the stock that we own in Sandy Springs now has all been acquired subsequent to the change in the law, and which occurred in 1960.

Q. Why did you take any stock at all? Why **[679]** didn't you just have the relationship without the stock? A. Well, I think there were—to my way of thinking, several reasons, the main ones being that as long as nobody else had any substantial block of stock, that made us the biggest stockholder. We were able to buy five percent of the bank in the Holding Company and five percent of the bank was acquired by the Citizens & Southern Profit-Sharing Fund, because they were also excellent investments. This meant that there was ten percent of the bank that was controlled in—effectively by us, according to the Bank Holding Company definition. Because, they subsequently attributed ownership by a trustee for the benefit of the employees to be ownership by the company itself. So we had effectively a ten-percent interest in it, and therefore we are the largest stockholder, by far, in the bank.

In addition to that, I think it said to the other people who were investing, "Look, the C&S is willing to put its money

down here." And it was just an example, an illustration that we were willing to risk our money if anybody else wanted—else wanted to, they at least knew that we were risking ours also.

Now, those are the two things that I say why we—sure, I think technically we could get—we could **[680]** have accomplished everything without even having a five-percent interest. I mean the pension plan could have been written that way and everything else could have, but I think these two things were reasonably important.

Q. Was there a separate and independent block of stock at Stone Mountain? A. There was. The McCurdy family, and you can attribute anywhere from thirty—I don't know, thirty to fifty percent of the bank being in the hands of——

Q. You spoke in terms of Tucker, of putting stock—in placing stock among employees and officers and so on as investments. What is the importance of friendly stockholders to you under these circumstances? A. Well, I think it is two-fold. It is a two-way street. It is really a good investment to them. I think, like Mr. Lane said yesterday about you could put a bank almost anywhere and make money, at least over the last ten or fifteen years, and that therefore we were giving the purchasers an opportunity to make a good investment. From the standpoint of the bank, it meant that your stockholders were people who knew you, who knew about you, who knew the way you did things and who approved of the way you did things. So, it just made for a more harmonious operation; that's all.

[681] Q. In your belief, does it help in the view you have of having control of these—having control of the management and policies of these banks that stock is in, as you put it, friendly hands there? A. Oh, yeah.

Q. How do you justify or would you even justify what Mr. Lane testified to yesterday and Mr. Starks this morning, that you would feel quite comfortable in recommending that a cus-

tomer of yours, for his convenience, go to a bank in which your holding company held only a five-percent share interest? A. Well, I think what Howard says is right, that we want to do what is the best thing for our customer, that actually we get more than five percent of the net profit because we also get a relationship that is certainly not unprofitable. We are getting the account of the bank, and it depends upon how much money they carry with us. It is more or less lucrative. So we really get more than five percent out of any five-percent bank.

Of course, I think all of these arrangements, these de novo associate correspondent banks, were all started with the thought in mind that they would some day be either wholly-owned subsidiaries or branches as a result of a merger.

[682] Q. How would you feel, if you can project your mind to such a circumstance, and this is just an opinion and an hypothetical situation, how would you feel that your relationship would be or that your actions would result if no merger approval or effort to merge these banks had been made at all? Would your relationship be continuing or would it not? A. Well, that would have to be—that would be a two-way thing, because it would have to be a bilateral agreement, bilateral decision. Both sides would have to agree. But from our sides, I think we could say that we would continue it, and I think the evidence of the answer is what we told them at Stone Mountain. We would be willing to leave the thing just like it is. We don't try to merge it, just go ahead with a five-percent relationship. They didn't accept—didn't decide to accept that, but that was our offer or our position I think has already been demonstrated, that we would just go along just like—like it had been. But I must say that seems to me to be an impossible situation, because I don't think there was ever any thought in mind of operating that way permanently. We just felt that the minute it was possible to do so, the banks would be merged in some way, consolidated or something.

[683] Q. When you include blocks of stock in your definition of correspondent associate, you are talking about blocks of stock and the importance of your five percent, none being greater than yours. Where do you place the president of these banks in that computation? A. The guys that were brought up by us, and if we want him I would say that he would stay with us, and therefore I would say he would be just as much on our —in our group as would my stock.

Mr. Hodgson: No further questions, Your Honor.

Cross-Examination

By Mr. Sims

Q. Mr. Hall, some of the questions I ask you might appear to have been asked before, but I am just trying to clear up a few areas. First of all, I would like to make clear—you said you had been with the C&S Holding Company for twenty or thirty years? A. Well, that's right.

Q. Is that correct? Is that since the time C&S Holding Company was established? A. No, the C&S Holding Company was organized in 1928. Actually it was originally started—I think there was a capital subscription as to the bank and [684] $400,000 of it was allocated to the formation of the Holding Company, and the stock of which was held in trust for the benefit of the shareholders of the bank. Then here, oh, some ten or fifteen years ago, that stock was distributed by the shareholders to the bank, so the bank actually owns the Holding Company, and it is one of the few arrangements in the country like that.

Q. All right. Now, you have been—have you been with any other banks other than C&S? A. No, sir.

Q. All your banking life has been with C&S? A. Been real lucky.

Q. Have you been—would you describe your activities with C&S in relation to the establishment of the correspondent associates, the acquisition of five-percent interest in various banks throughout the state, the attempts up to the present day to merge, some of which have been successful in the past? Could I assume that you have been involved in those activities right along? A. Well, involved, or knew about what was going on?

Q. Would it be not fair—would it be fair to describe your role as a supervisory or coordinating role in that effort? **[685]** A. In some areas. We all work together in the C&S Bank and I think that is one of our—the secrets of our—what little success we have had, is that everybody does anything they want to, and everybody gets in everybody else's way, and we are all interested in doing the job, which is supplying the best type of banking service we can supply to the State of Georgia.

Q. Based on your experience in banking, Mr. Hall, who are the policymakers in the bank? A. Mills Lane.

Q. No, no, not just the C&S Bank, in a bank, who are the policymakers in terms of roles, officers, directors? A. It all depends on the way a bank is run, as I see it. And it all depends on whether the directors are groups who are sitting there to veto the actions of the management or whether they are a group who actually run the bank. In all of our banks, and in any bank that we have anything to do with, we have a very positive understanding that we know more about running a bank than the directors do. And that if you don't want to do it this way, well, let's don't get together; let's stay apart. But if you want us to help you with the bank, you have got to understand that we believe that we know how to run a bank. Just like, and it is **[686]** a very simple thing to explain to a director, because you say to the man who runs a drugstore, "We know nothing about nothing about running a drugstore, so you run the drugstore". You know nothing about running the bank, so we run the bank. You don't like the way we run the bank, you tell us and we will get out.

[687] Q. Okay. Now taking Citizens & Southern National Bank as an example, and would you say the policymakers or maker, C&S National Bank, is or are the officers or the Directors of the bank? A. I can only, yes, and I think the Directors, I don't mean—by saying this, I don't cast any aspersions upon the Directors, I think they themselves know that they don't know the problem of making installment loans, the problem of soliciting accounts, the problem of recruiting people. These are the things that management knows about. These are the things that management should do. We use our Directors more as a review board and our Directors' meetings consist primarily of informing the Directors of what is going on and what we are trying to make go on in the future. But, definitely in our bank, the Directors do not set the policies, they might veto them.

Q. In the time you have been associated with the Citizens & Southern National, have there been any disagreements between management and Directors? A. Let's see. The only one I can remember was when Howard Starks got that logo and we made the mistake of asking all the Directors before we started using it, whether they liked it. They, as well as I, didn't like it. So, subsequently, we had to go back to them and after about six months, we finally got them to accept it.

[688] So, I think that was somewhat of a lesson. That's the only thing I can remember that we have been in disagreement about because the rest of the things we always, I have always gone ahead and done or have said we are planning to do this and I don't remember them ever saying "Don't do that." There may have been something else.

Q. You said that, that management sets the policies of Citizens & Southern National Bank, but the Board of Directors might, or has the capability to veto; is that a correct statement? A. I think so.

Q. You have been a Director on several banks at one time or another, have you not? A. Yes.

Q. Are Directors of interstate or national banks required to take any oaths? A. I believe they are.

Q. Do you know what that oath consists of? A. No, I don't.

Q. Let me read to you, Mr. Hall, out of the United States Code, Section 73, Title 12. "Each Director, when appointed or elected, shall take an oath that he will so far as the duty devolves on him, diligently, honestly administer the affairs of such association and not knowingly violate or willingly permit to be violated any provisions **[689]** of this chapter and that he is the owner in good faith in his own right to the number of shares of stock required by that chapter."

Then it continues, what does that mean to you? A. It would mean to me just exactly what our Directors are doing in allowing us to run the bank.

Q. When you were on the Board of Directors, of any of the banks that you were on, I believe you said you were on Stone Mountain at one time and some others around the state of Georgia. Did you at any time have any personal disagreements with any of the activities of management of those banks? A. I am sure I must have.

Q. But you don't recall any specific instances? A. Yes, at Stone Mountain, I didn't agree with the way they would go, wanted to go with five year debentures instead of the twenty-five years debentures.

Q. Was that suggestion offered by the management of the bank? A. It was offered, that's right. Offered by the management of the bank.

Q. And the Board of Directors would disagree with the management? A. That's right.

Q. And that suggestion was not implemented? **[690]** A. That's right.

Q. If I could get you just to help me out a little bit on these terms. A. You don't need any help.

Q. I wish you were right, Mr. Hall. Now we have got several species or at least some species of banks running around, running around in this case. As I understand it, there are some banks that are correspondents. Now some banks are super-correspondents, correspondent associates, branches, affiliates, subsidiaries. I guess there are just banks after that. The banks in which you own a majority interest in terms of stock, what do you call those banks? A. I call them subsidiaries, fully-owned subsidiaries. No, not even wholly-owned. Subsidiaries.

Q. You just call them subsidiaries? Are those banks in which you own more than 50% of the voting stock? A. That's right. That's right.

Q. Now the bank in which you own less than 50% of the voting stock, I assume from listening to the testimony over the past couple of days, there aren't any banks between five and over fifty; is that correct? You either own five per cent or own fifty? A. I don't think there are now. That's right, there are none now.

[691] Q. Those banks in which you own five per cent of the stock, you call—— A. Some of them we call associate correspondents, some of them I call super-correspondents.

Q. Okay. Do your subsidiaries have Board of Directors? A. They do.

Q. Have you ever served on the Board of Directors of one of the subsidiary banks of Citizens & Southern National? A. I don't believe so.

Q. Have any officers of Citizens & Southern National ever served on those boards? A. Yes, we had, have one on every one of them, whoever is responsible for that area, the bank in that area serves on the Board of that bank. For example, Dublin, in Dublin either Bennett Brown or Bill Mathis, one, is on that Board. That is the way it goes on all of them—majority owned banks.

Q. If I understand correctly, there are three banks in Fulton and DeKalb County you would classify as subsidiaries? A. There are in what counties?

Q. Fulton and DeKalb Counties. A. I believe there are six; aren't they?

[692] Q. I'm talking about—— A. You are talking about subsidiaries, about the way, you are talking about subsidiaries as defined under the Bank Holding Company Act.

Q. I'm talking about how you define it. A. Fulton County, there would be Fulton-DeKalb, there would be Emory, East Point and Avondale, that's right.

Q. Are there any officers of Citizens & Southern National which sit on those Boards? A. Yes, I believe.

Q. Today? A. I think so.

Q. You don't sit on any of those boards? A. No, I do not.

Q. To your knowledge, were officers of C&S National sitting on those boards at the time that you had the trouble with the Fed over the officers of Citizens & Southern National being on the Boards of some of your five per cent banks? A. Yes, there were, not the same people, but there were other people.

Q. Now as I understand your testimony correctly, you said that the Feds, I believe I may not be correct on that for one reason or another advised you to remove your Citizens & Southern National offices from the Boards **[693]** of the five per cent banks in Fulton and DeKalb Counties; is that correct? A. Did I say that or did Howard?

Q. I thought you did. A. That's true they did, that's right, I believe it was sort of a side issue as a result of the hearing. It came up about the same time as the hearing.

Q. They did not then, I take it, just by implication, advise you to remove your officers from the Board of subsidiary banks? A. It seems that there is an exception. I think the thing read

that where 50%, where the stock—where the same stockholders owned 50% or more of one bank and also owned 50% or more of another bank, this is exempt from the provisions of Regulation L. I believe Regulation L is the equivalent to Section 8 of the Clayton Act.

Q. Do you know what purpose is behind Section 8 of the Clayton Act and regulation L? A. No, I don't.

Q. I take it after, you testified that after the Fed asked you to remove these, you did remove these Directors rather promptly? A. Yes, each one ceased to be full Directors and continued in the capacity of advisory Directors.

Q. Did I hear you correctly when you said that **[694]** technical change didn't make any difference in their function? A. I believe Howard said that. I would agree with it completely because at Stone Mountain, I was no better off as an advisory Board member than I was as a member of the Board.

Q. So what it boils down to really, was you simply didn't cast votes? A. That's right, and this we discussed with the supervisory authorities. They acknowledged that, too, that was why we have no real quarrel with them. We are perfectly happy to do it that way.

Q. Did the fact you were able to cast votes prior to leaving those Boards really matter to you? A. It didn't mean anything.

Q. Now, going back to your distinction between correspondent associates and super-correspondents, would both—would banks fall in both of those groups? Would you own stock in banks falling in both of those groups? A. Yes.

Q. Do you know how many banks in the State of Georgia, just to pick an area, that your Holding Company owns 5% of the stock in or 5% or less? A. It's about twenty, I think.

Q. Twenty in the entire state? **[695]** A. I am sure we have got it somewhere in the exhibits.

Q. How many of those are correspondent associates? A. I think all but about four or five. I think again if you want to identify them, you can get out the Federal Reserve Annual Report. We identify them in it as to whether they were in effect super-correspondents or associate correspondents.

Q. The best I can do for an annual report is 1969. Has there been any substantial changes since then? A. Oh, yes, because I don't believe the Bank Holding Company Act of 1970 had not been passed and therefore, there was not the description or definition of what a subsidiary was.

Mr. Hodgson: I may be able to help you. I think Mr. Sims is talking about the bank's own annual report. I believe Mr. Hall is talking about the annual report to the Federal Reserve Board.

Q. I apologize. You have your annual report, Citizens & Southern Holding Company, December 31st, 1969. A. Every holding company is required to make an annual report to the Federal Reserve Board. In there, we are now, we are required to list subsidiaries.

Q. Right. A. We, therefore, have to determine which ones **[696]** of these banks we think are subsidiaries under the definition of the 1970 Bank Holding Company Act. In my recollection, without having the thing before me is that there are four, five banks that we classify as not being subsidiaries. We footnote them and say no hearing has been held on these. But we assume these banks would be subsidiaries under, I forget the section, 2G23 or something like that, those ones that we don't identify that way are the ones that I call super-correspondents. Those are the ones like Woodstock, Fayetteville, Seynoia, Bainbridge. I don't know what else.

Q. I believe you listed over four qualifications when you described what a correspondent associate was. A. That's right.

Q. Let me see if I recall those correctly. First, no large block of stock was held by a group other than Citizens & Southern? A. That's right.

Q. The second was that there was an understanding that if possible in the future, they would merge or become a part of C&S? A. Right.

Q. The third was, has to qualify as a subsidiary under the Bank Holding Company Act? A. Right, under this one that we have just been talking about, there is—does anybody have a copy of **[697]** Regulation Y here?

Q. I don't have a copy of Regulation Y. I have a copy of that particular section of the Bank Holding Company Act, if that would be helpful. A. Where it deals with determination of control.

Mr. Hodgson: 2A2C, he is talking about.

A. Anyway, in there, one of the ways of determining control is whether or not the company, meaning the holding company, exercises substantial influence over, I think it says the managing policies of the bank. This is where—this is the type of control that I think we exercise in these banks that I describe as correspondent associates or associate correspondents, whatever you call them.

[698] Q. Just one second here and let me find that provision. A. Yes.

Q. Tell me, if this sounds correct, Mr. Hall. "Subsidiaries with respect to a——"

Mr. Hodgson: May I ask counsel to tell us which section you are reading from?

Mr. Sims: I am looking in your brief on page 110, it is 12(c), 1841(d).

Mr. Hodgson: D?

Mr. Sims: Yes.

Mr. Hodgson: No, sir, that is not the one he is talking about.

Mr. Sims: Let me ask him about this section then.

Mr. Hodgson: All right.

By Mr. Sims

Q. From 1841(d), and I believe this is the definition of a subsidiary or one of the parts of a definition of subsidiary: "Subsidiary with respect to a specified bank holding company means any company with respect to the management or policies of which such bank holding company has the power, directly or indirectly, to exercise the controlling influence, as determined by the Board, after notice and opportunity for hearing."
[699] That's the definition that you are using? A. No, it may be the same one, but the one I am using is the one in the section that talks about determining control, and it doesn't read exactly that way. I don't know whether—whether there is any—whether we are quibbling about words or not. I just don't want to make a misstatement.

Q. Let me have you take a look at this, Mr. Hall, study it, if you would. A. You might—the part that I'm—this is not the part, no.

Q. Well, that is from the Bank Holding Company Act, that is from the section 1841(d), which defines what subsidiaries or bank holding companies are. Reading that definition, if you would, would you consider that the correspondent associates throughout the State of Georgia qualify as subsidiaries under the Bank Holding Company Act? I realize you are not a lawyer, just reading the words. A. I believe so. I believe so, but I would ask my counsel if it were.

Q. I'm not asking for a legal—I just want as you understand it. A. I believe it is the same thing as the other, but it is put in a different way, because in the other **[700]** one I believe it gets at it by defining what control is, and then saying that if it is controlled, why——

Q. Have you been informed by the Federal Reserve Board that you must, in your annual reports, list subsidiaries—list as subsidiaries banks over which you have or claim to have a controlling influence? A. I believe that is part of the instructions of it; is it not?

Q. I am not sure, sir. A. I think so.

Q. I am not sure. A. I think that's right.

Q. Is this the reason you put it in? A. That's right.

Q. Now, let's take the correspondent associates and the super-correspondents, if we can, as two different groups and look at those. Do these banks receive from C&S the same services? A. I think they, for all practical purposes, the ones that I call the super-correspondents, receive the same services. Sometimes it is a little bit harder to get some of the guys to give them the same services, but usually, I beat them over the head and they will finally come around.

Q. Going one step further, then, to the ordinary correspondent, do they receive the same services? **[701]** A. No, sir.

Q. What kind of services don't they receive? A. Well, he had a checklist, we asked whether you were—whether you had the people from the correspondent bank division of the other banks. We asked them a series of some eight or nine or ten questions about what did they furnish with these kind of services.

Q. Is this the list that had the internal audits and that sort of thing in it? A. This is the one—yeah, and had a pool of people to leave on vacations and sickness, the audit— my mind goes blank right now, but I remember writing out a list of about eight or ten things that these banks do we don't normally do for correspondents.

Q. Would you do any of those services to the extent you can remember them, I mean to the extent you were requested by a correspondent? A. I don't believe we would, no.

Q. Then, looking at the correspondent associates versus the super-correspondents, does the management, and by that——

The Court: Let's go back to that last, the distinguishing characteristics of the list to which you referred. Was the adjective or adverb "regular and routine", as I recall it, such a regular and **[702]** routine audits?

Mr. Hodgson: Systematically and routinely were the words, Your Honor.

The Court: All right, I am sorry. Now, when you said no to the last question, you were putting a negative based on the systematic and routine, rather than upon the providing of the services upon request, which might not be upon a systematic and routine basis; is that correct?

A. That is a fair statement.

The Court: That is what I was interpreting.

A. That is exactly right.

The Court: So the emphasis was on that systematic and routine.

A. Right.

By Mr. Sims

Q. Let me get that clear in my mind then. Would you provide any of these services to your regular correspondents? A. We have and do.

Q. Upon request? A. We have and we do. I don't know whether we—without looking at the list, I don't remember whether we do or have provided every one of them to some particular correspondent, but we would own—see, we even do it to **[703]** some non-correspondents, too.

Q. You provide these kind of services to non-correspondents? A. If we are trying to get their business.

Q. I see. Sort of a sales technique? A. Sure.

Q. Going back, then, to the difference between correspondents and super-correspondents, does the management of the super-correspondents, and by management I mean Board of Directors and Presidents, have any greater or lesser authority as to the management of the bank, than the management of the correspondent associates? A. Well, I think one of the things that I said had to have in a—is, an associate correspondent, was this matter of exercising substantial influence over the management policies. This, I don't think we do in a super-correspondent, besides there being a block of stock, besides one particular individual or family or group owning a substantial block. Also, we do not exercise the same degree of influence over the management. In other words, they don't do everything we ask them to do.

Q. I think I understand that distinction. A. Okay.

Q. I am trying to get a little narrower point, perhaps. Is the authority to manage the bank, which is **[704]** vested in the Board of Directors and the President of the correspondent associates, any different from the authority in the super-correspondents? A. Are you asking me about the authority of the—please say that again, I am——

Q. Well, maybe I am not making myself clear. I think that Mr. Lane and Mr. Starks, perhaps even yourself, have testified that you don't dictate or maybe even can't dictate to your correspondent associates; is that correct? A. Well, obviously, we can't dictate. At any point, the Directors can walk out, if they want to, I guess, but from a practical standpoint, we influence the decisions of the management to the point where you never have to get to dictating. We would never dictate, because if it got to that point, it would be time to separate.

Q. Well, would you say then, that the real difference between the banks which you own 5% in and call super-correspondents and the banks that you own 5% in and call correspondent associates, are the relationships with the officers

and Board of Directors that C&S National has, would that be a fair statement? A. The difference would be, number one, that there would not be—that there would be a block of stock that was owned by one individual or group of individuals which was of a significant size to where that person probably [705] could exercise effective voting control. Number two, there would be no agreement with that individual that if and when merger was possible, that they would merge.

Number three, there would be no understanding that the C&S National Bank would manage the bank subject to the veto of the Board of Directors. The only thing that would be present, I guess, would be the 5% interest, and that's all, really. Five per cent interest, plus giving them the services we give.

The Court: Let me ask him a question.

Mr. Sims: All right.

The Court: Up until the time of the problem with Stone Mountain; is that true?

A. Well, there was—the problems were——

The Court: In other words, you gave them—did you give them the limited range of services?

A. Did we give who a limited range?

The Court: Stone Mountain.

A. Yes, sir, we gave them the same.

The Court: You gave them the full range or the limited range?

A. The full range.

The Court: So they were a correspondent——

A. Well, didn't really think of it at that point. At that point, it really wasn't an associate correspondent [706] or not an associate correspondent.

The Court: Didn't have the super concept at that time?

A. It came in—that's right. I know it sounds stupid, I apologize, but that is the way it has evolved, and that is the easiest way I can explain it.

The Court: The super—Stone Mountain got everything that Chamblee did?

A. Yes, sir.

The Court: How about Hapeville?

A. No, no, that was an investment, I guess I guess must have only had a fourth.

By Mr. Sims

Q. Hapeville? A. Hapeville, basically, and was because we were competing in that market, and there was no prospect of us ever getting into that with that one. We were competing with it at the time we bought the 5% interest.

Q. If that is true, why did you buy the 5% interest? A. Because it was in trouble and they wanted somebody to help them.

Q. But this is not one of those banks which you ultimately planned to merge? A. Oh, no, sir, no, sir. We were holding it and helping them to find somebody. Unfortunately, unfortunately, **[707]** we weren't able to find somebody as quickly as they were, but we sent three or four people out there to interview——

The Court: Thinking back on the various banks in which you held 5%, would it be correct—a correct generalization as to the ones that you now characterize as correspondent associates, and you were with those banks from the very formation of all of them, participated in their formation, and in the ones which you characterize now as super-correspondent banks, what you call, although you do have the interest, you came upon

them at some stage after their formation and it occurred to you that they might qualify and some might and some didn't.

A. No, sir. Tucker, for example, I would classify as an associate correspondent, although we acquired an interest in it after it had been organized. We did not compete with them at the time that we acquired the interest, but nevertheless, that was a going bank. And I think we exercised the same degree of influence on the management of the Tucker bank that we do over any other right now.

And I think we did the day we went into it.

The Court: Well, normally you have someone who is approving participants, the movant in the enterprise, the dominant personality, when you start something which normally I would think would put it **[708]** in your category of the supers rather than the correspondent associates.

Now, if the Tucker had already been formed I would have assumed that there was somebody who was the moving genius in that organization. Did you supersede and take his or her place or what?

A. Yes, sir, this was Mr. Cofer with the Cofer family and they were running the bank, basically, as an adjunct to the lumber supply business. Then, competition came in there, somebody else saw that the bank was not really serving the community in the way the bank could, and Mr. Cofer would acknowledge that. He didn't have time to run the lumber supply business and the bank, so he was looking for somebody to come in and do a good job in his bank, that he felt he had to have, since there was competition coming.

The Court: I didn't understand Mr. Lane's testimony, although it may have been true that I missed it, that you bought out all of the Cofer family's stock?

A. We bought out 80% of it. The Cofer family retained 20% of it. I think the reason for that, they

were good friends of ours, they were a substantial family and they were the ones we wanted.

The Court: You didn't consider that a sub- **[709]** stantial block of stock?

A. No, we didn't then. We know that we had 60% in the hands of very friendly people, I believe that's about the percentage.

[710] Q. How many of the banks would you classify as correspondent associates that you participated in the organization of? A. In Atlanta, Fulton?

Q. In the State of Georgia. A. I don't have a list of them.

Q. Most—— A. Oh, let's see, maybe I can put it this way. Outside of the Atlanta-Fulton, of course in Atlanta, Fulton County, would be the five that are here. Outside of Atlanta, I guess there is the one in—the one that we participated originally in the formation would be in Henry County and Dalton. I don't know whether there are any others or not. I believe all the rest of them were situations where the President of the Bank had gotten to the stage where he had to retire. They were looking for somebody to come in and take over.

Q. It's fair to say then that most of the banks you classify as correspondent associates, you did not participate in the organization of? A. Let's see, probably more of them that we classify as, as associate correspondents, probably more of them we did not start, but that will all be out of Atlanta. Most of them are from Atlanta.

Q. Now, did I understand your testimony earlier **[711]** correctly, and I might ask you, you have been in the courtroom while Mr. Lane and Mr. Starks have testified; have you not?

Q. You have heard their testimony? A. Yes.

Q. My understanding of that testimony is that you were the moving force in establishing the correspondent associates that

are defendants in this lawsuit; is that correct? A. Oh, yes, the defendants that are involved in this lawsuit, that is your question?

Q. Yes, sir. A. Right.

Q. Yes, sir, it is. A. That would be my description, of course; it's a matter of semantics as to what you say is the moving force. I think we were as much of a moving force as any other force in every one of them.

Q. Let me go back to this Fed hearing that's been talked about quite a bit here today and quote Mr. Lane on page 7, "In no case in the entire history of this bank have we ever gone to a community either to buy interest in a bank or to organize new ones. It's always been, the policy has always been to us as in the case where a bank had deteriorated." Doesn't that seem inconsistent to you? **[712]** A. No.

Q. Why doesn't it? A. I still think if a group from Chamblee came to us, that we were still the moving force to get the thing done, my recollection of it is that, as I say, the chief national bank examiner said to us, "This is a place the bank ought to go." We were looking around and we happened to find out there was another group that was interested in starting a bank at that time and I believe had been turned down and we were able to get with them, we all had sort of a handmade group already. I think to be honest, to be perfectly fair with you about the thing, you could answer the question either way, that there was somebody else was the moving force or we were. I think there was a jointly, was the way it was.

Q. Would you say that these initial acquisitions, just tell me if you agree with this statement or not, if you would. Would you say that these initial acquisitions of 5% interest in these banks were part of a plan to gain ultimate control of the banks? A. Of what banks?

Q. The banks that are defendants in this lawsuit. A. Each individual bank?

Q. Right. A. If our plan was to ultimately merge with them, [713] would you say that that was to obtain control of them?

Q. I don't know, would you? A. You can't answer it.

Q. Your plan in all of these instances—— A. Was to ultimately merge with them because that's what—I say that's what makes it so impossible to answer about what would we do absent a merger, because that's what these things were really created for was to merge.

Q. How many of the banks, if you know, or just an estimate if you don't know exactly, in Georgia, which you have a 5% interest in, have the C&S name? A. It's those ones I call associate correspondents.

Q. All the associate correspondents? A. Yes.

Q. And nobody has your name who isn't an associate correspondent? A. I believe that's right.

Q. When you give them the name or when they take the name, whichever way it works, I assume this means that you have reached an agreement or understanding that you are eventually going to merge with them, if possible; is that correct? A. Right, an understanding. No written agreement, no formal agreement or anything like that.

Q. This is true of all the banks throughout the [714] State of Georgia? A. Yes.

Q. All the correspondent associates? A. Yes, I think so. Without looking at the list and analyzing each one of them individually, I would say yes, that's true.

Q. I believe Mr. Lane testified that having the stock of these banks placed in friendly hands really wasn't the part of the control that he was referring to in his testimony, if I heard you

correctly. I think Mr. Hodgson asked you does this help and you said yes. A. Sure it does.

Q. Looking at these charts which Mr. Hodgson had you look at on your direct testimony, most of them are divided into five categories, the officers, Directors and employees of the C&S National Bank and affiliates. Now am I correct when you say affiliates, there—do you know what they are talking about? A. Subsidiaries.

Q. The second group is former officers, Directors and employees of C&S National affiliates. A. The one you are looking at might be——

Q. I'm looking at South DeKalb, maybe that's different. I'm looking at South DeKalb right now. A. Okay, I've got it, I believe.

[715] Q. Now the third group is officers, Directors and employees of C&S, South DeKalb, other C&S five per cent banks? A. Right.

Q. This would include, this includes both correspondent associates and super-correspondents? A. It would include both of them, but for practical purposes, would be very few shares held by the one I would classify as super-correspondents, in my judgment. I think we would have to go look at it specifically. I don't believe there would be many of those.

Q. The fourth and fifth categories, customers of C&S National Bank and affiliates, customers of C&S National Bank of Sandy Springs and other five per cent banks, if you don't know, do you have an opinion as to whether or not any of those customers which own stock in your bank are also, get banking services from other banks in and around Atlanta? A. I would imagine they would.

Q. Would this be more true of the larger customers? Is it frequent for a large bank customer to get services from more than one bank? A. Sure.

Q. Do you happen to know whether or not those customers own stock in any other banks? A. No, I do not. My recollection of the way we **[716]** got it, this thing was a result of a hearing. It seems to me that's the way they asked us to break them down at the hearing. Probably just carried—when this thing came up, we just sort of updated the information. I believe that's right, the Fed hearing.

Q. I think you testified, or I may be confusing you with Mr. Starks or Mr. Lane again, one of the three testified, one of the problems was Stone Mountain where a lot of independent people were out there, Scotch and Irish, so on and so forth? A. Mr. Lane.

Q. Mr. Lane, yes. That is they never really felt they were part of the C&S family system; do you agree with that? A. I do, I do.

Q. Now was that one of the instances in which there was a large block of stock in one individual or group of individuals acting together? A. McCurdy's family.

The Court: What is the McCurdy family? A. Well, gosh, the more I stayed out there, the more I thought there was nothing in Stone Mountain but McCurdys. There is a McCurdy Chevrolet Company, Doug McCurdy. I don't honestly know all their relations. Mr. Evans, who is married to a McCurdy. Two McCurdy **[717]** sisters from whom the property was bought out there and Lou Jordan's wife is a McCurdy. Kingsley Weatherly's wife is a McCurdy. When you added them all up, my recollection is something in the neighborhood of thirty-five to forty per cent held by people who were either, had the name of McCurdy or who were married into the McCurdy family. I'm not very good at keeping up with families.

The Court: Prior to your interest in that bank, had it been operated by the McCurdy family?

A. The McCurdy family had controlling—were the controlling group of Directors. There were, I think, a majority of the Directors who have been included in the McCurdy family. So they, they controlled it through the Board, yes, sir.

[718] By Mr. Sims

Q. Now, I assume, and correct me if I am wrong, that since one of the—one of your conditions for calling a bank a correspondent associate is that that kind of situation doesn't exist, a large block of stock held in hands other than C&S. A. That's right.

Q. That that is not true of any of the five-percent banks that are involved in this litigation? A. Not to my knowledge is it true.

Q. Has it ever been true? A. Not to my knowledge, I don't believe so.

Q. I would like to go back, if I could, to the Fed hearing.

Look on Page 118. Mr. Noble is asking questions; Mr. Lane and you are both responding. I will point out which is which.

Mr. Noble asked: I mean is it true that someone had an ownership interest greater than the combined interest of C&S and the president?

Mr. Lane: That is true at Warner Robbins and it was true at Pelham.

Mr. Hall: It is true at Sandy Springs and it is true at Chamblee and Fayetteville.

A. I must have misunderstood the question. I **[719]** mean I really—I mean I can't imagine why it would be answered that way. I mean I can't remember any block at Chamblee, in my recollection. The largest stockholder is a druggist out there, and I believe our holdings are bigger than his.

At Sandy Springs, I don't know of anybody at Sandy Springs, so I don't know why I would answer it that way.

Q. Let me read on a little bit more, maybe tie it back in.

Mr. Lane continues his answer: and true at Hogansville. It is true at the Coffee County Bank in Douglas.

Mr. Starks: It is true at Stockbridge.

Mr. Hall: Stone Mountain.

Mr. O'Connor: These are interests unrelated to C&S?

Mr. Lane: Absolutely.

Does that help you at all?

A. No, I can't understand why Sandy Springs and Chamblee would have been included in there. But maybe somebody else can help me, but I can't—I can't recall.

Q. Let me read on Page 119, if I can. Mr. Noble is in the pages prior to this asking for a little **[720]** description of each of the banks and he has now gotten to the Chamblee National Bank.

Mr. Noble says: The Chamblee National Bank.

Mr. Lane: That is a bank where there is a group of citizens. There is no bank in the community, and that is at the north end of Atlanta, and a group of citizens were being put together by the Trust Company of Georgia. And I said, 'How about letting me come out and talk to you guys? I think I have a better deal to offer you.' So we met for supper one night and had a highball and I told them about the C&S benefits, and they said, 'We don't want to go to the Trust Company.' We bought five percent and they had all the stock subscribed. We probably have less affiliated interest of any kind in that bank than in any of the five percenters that started. They organized

the bank, and I said, 'Please, I am a better partner for you than the Trust Company.'

I would like to go back to a part of that quotation, if I could. 'We probably had less affiliated [721] interest in that bank than probably any of the five percenters that started." Do you agree with that statement? A. I know that we had ten percent of that bank in the Holding Company, and the profit-sharing plan, and I don't believe anybody came anywhere near that. Any other single stockholder or group of stockholders.

Q. Well, is that all? Is that all that was meant by affiliated interest? We probably have less affiliated interest of any kind? A. Affiliated. Well, what did these show? Did these show that we had less affiliated in Chamblee than the rest of them? Chamblee and Sandy Springs, it seems to me, are the ones that we have the less—the least amount of interest in this particular suit.

Q. All right. Did you—did you know or were you aware that a man named Williams and his related interest had approximately 2,800 shares of Chamblee National Bank? A. I didn't realize he had that many. He was the druggist that I talked about. I didn't think it was that much.

Q. Do you know how many shares C&S Holding had at that time? A. No, I don't know.

Q. The number of shares, would 1,500 sound [722] correct to you? A. If it is correct, then there would also be 1,500 in the name of the profit-sharing fund, which would add up to more than 2,800.

Mr. Sims: All right. Your Honor, I wonder if we might take a short recess at this point?

The Court: All right, we will take a ten-minute recess.

(Whereupon a recess was had.)

By Mr. Sims

Q. Mr. Hall, you stated that a couple of times, I think, in answer to my somewhat repetitive questions, that one of the characteristics of the bank which you call a correspondent associate is that it fits the definition of subsidiary in the Bank Holding Company Act. A. That's right.

Q. Did you have correspondent associates before January 1st, 1970? A. We used the term before that.

Q. Was the definition you are referring to in the Act prior to that time? A. No, it isn't; no, it wasn't.

Q. Then prior to that time, you didn't think **[723]** that that was a necessary condition? A. Oh, I would have said it would have been one of them that the Fed had talked to us about in the hearing, and which they wanted Congress to write into the law, which is what they did. When they wrote it into the Bank Holding Company Act, because they specifically, directly told us that they were going to ask Congress to put that in the law, so that we would be deemed to control these particular types of situations.

Q. Who was it that told you that? A. Tom O'Connell.

Q. When did he tell you that? A. I don't know whether it was at the end of the hearing or whether it was a period of time after that. But since the law has come out, he has, in answer to my inquiry, did you put this in the law because of us? And he said yes, you and others.

Q. Now, you said that you were notified that you should start listing in your annual report to the Fed banks which you considered subsidiaries because of qualifying under this new language in the Bank Holding Company Act; is that correct? A. Did I say that?

Q. Is that correct? I am sorry. **[724]** A. No, I didn't say we were notified. I said there is a provision in the instructions for preparing a bank, for preparing the annual report for a bank holding company, which says to list the subsidiaries. Since the 1970 Act has come out, you have, therefore, got to decide whether a particular bank that you own an interest in is a subsidiary or is not.

[725] Q. Has there been any hearing by the Federal Reserve Board on that question? A. I'm sorry to say there has not.

Q. Have you requested such a hearing? A. We have requested a hearing unofficially and they asked us not to officially ask for it.

Q. I take it then—— A. Because the inference that I get is that they really don't know what to do. They have got their hands so full of other things, as I gather, that are more important than deciding whether these particular banks actually are subsidiaries under the law, under the Act.

Q. So it's fair to say that the Federal Reserve Board has not yet determined these banks to be subsidiaries? A. No, sir, I'm sorry, if I gave that impression. What I intended to say was neither of the banks, either in my judgment, fell under that definition as expressed in Regulation Y.

Q. And you list them in your annual report simply because the annual report calls for subsidiaries? A. That's right, we put a notation on there that we are listing them as subsidiaries because of the provisions and footnote the ones that are not to the effect that we don't believe they would come under the definition.

Q. Now you testified earlier that you have always **[726]** kept the regulatory agencies fully informed of your relationship with these banks and any activities between? A. To the best of our ability, yes.

Q. Did you also testify that when you acquired your interest in the Tucker bank that some 80% of the stock in that bank changed hands? A. I believe that's right.

Q. At the time that you acquired that interest in the Tucker bank, where did that 80% go immediately from whoever owned it before? A. It went into the hands of—I believe it was Bennett Brown's agent and Howard Stark's agent and it was then transferred, I think, within thirty days, to the final purchasers. I know we made an announcement to all of the staff, that is officers and employees, that this stock was available if they wanted to buy it. We would even finance it on a pay-as-you-go plan.

Q. You did not seek approval from any of the regulatory agencies to acquire that stock? A. I didn't think there was any approval required. The bank at Tucker, I believe as it should have done, reported to the FDIC and the Superintendent of Banks, because it was a substantial change in the ownership. I believe that they did that although I am not positive. That's what they should have done.

[727] Q. What is your understanding of why the Federal Deposit Insurance Corporation turned down your application to merge the Tucker bank? A. Because it was not a de novo situation. That was an acquisition of a going bank. And in our judgment, it was not a going bank, it was a bank that was created in 1919, as I remember, and it had only grown to three and a half million dollars, three million, something like that and after we got into it, of course, a lot of it was due to the fact that that area mushroomed right about that time, but it wasn't very long, but it was a fifteen or eighteen million dollar bank. As I said, it's now a thirty-five million dollar bank. That's over a period of about six or seven years, which is pretty good growth.

Q. The situation in respect to your bank, the relationship between your bank and Tucker bank right now today is because of the FDIC approval or disapproval, the same as would have

been the case if they had turned down all of these banks in relation to the defendants in this case; is that correct? A. That's a kind of confusing statement.

Q. You applied to merge the Tucker bank, you were turned down by the FDIC, correct? A. That's right.

Q. You still have a 5% interest in the Tucker bank **[728]** is that correct? A. We still do.

Q. Do you consider them a correspondent associate? A. We still do.

Q. What do you plan to do with that situation? A. I think a lot of it depends on the outcome of this suit.

Q. How is that? A. Well, if you let us go, why we would be encouraged. Maybe we could go back on the Tucker question.

Q. Where would you go back? A. We would make that decision at that moment.

Q. Would you have a choice? A. Sure.

Q. Why is that? A. Because we have both a national bank, we are a national bank and we have affiliates who are state and non-member banks.

Q. You go to different regulatory agencies for approval? A. That's right.

Q. Is it fair to say then, that you are waiting to see what you are going to do with Tucker until this case is decided? A. Yes, sir.

[729] Q. You mentioned earlier, I think, in your direct testimony something about a merger poll that was taken in connection with the application and supplement to the application? A. Well, I believe I said that in the voting on the merger, that there were only two or three individuals who voted against it in the stockholders meeting. And I also said that one of the Directors on one of the five per cent banks reminded us that when he had gone out to sell the stock, originally, he had sold it to every-

body on the basis that this bank will ultimately be merged into the C&S group of banks. And we immediately drew up a letter to go to all of the stockholders to see if they all felt that way in all of the banks. And I believe we got back about 95% of the stockholders who answered affirmatively.

Q. When was this letter sent out? This is after you filed the application? A. This was, yes, after we had filed the application and after you all had stopped it.

Q. This is after the vote, vote by the stockholders in both institutions to merge? A. Right, but the question that we asked them was did you buy it originally with the understanding that the banks would be merged, with the expectation, I believe, was the way it was worded.

[730] Q. Does each of the banks in which you own 5% interest maintain correspondent accounts with your banks? A. I'm not real sure.

Q. Would you be surprised if they didn't? A. Would I be surprised if they didn't?

Q. Right. A. No.

Q. You don't necessarily expect them to maintain correspondent accounts with your bank? A. Let's be sure we understand each other. By your bank, you mean the C&S National Bank?

Q. Yes, sir. A. No. I believe in reality a lot of them maintain accounts with some of our affiliate banks. Because we have to pay this, I almost feel like this is not to get up on a sandbox and talk about indirect taxes banks pay, because we have to put up reserves with deposits that are in the National Bank. We ask these people to keep your money with some other bank where the reserves are not required. So, in answer to your question, technically, I mean to specifically say they are under our control, but there are some of our affiliated banks where reserve requirements are zero for all practical purposes.

Q. If I understand correctly, then are you saying that all the banks in which you own 5% interest do maintain [731] correspondent accounts with other—your bank or one other subsidiary? A. That's right.

Q. Are they expected to do that? A. Well, they have got to carry there—they have got reserve requirements so they have to carry the reserve requirements somewhere. We would be kind of foolish if we were exercising management, exercising substantial influence over the management policies and didn't.

Q. Influence that one? A. Right.

Q. Right. Do you own stock in any bank outside the State of Georgia? A. We have about, Citizens & Southern Holding Company has a portfolio of about twenty-five million dollars worth of non-Georgia bank stocks. These are all investments.

Q. Do any of those banks use your bank as correspondent? A. Some of them do, some of them don't. These are purely investments.

Q. None of these are correspondent associates? A. No.

Q. Or even super-correspondents? A. No.

[732] Q. If I could just go back one minute to the Chamblee organization, have the people that you eventually organized the bank with, the group of Chamblee residents, do you know whether they had approached any other bank prior to talking to you? A. My understanding is that they had, either to whole group or part of the group had already talked to people at the Trust Company, my understanding was that Trust Company indicated either no interest or not enough interest and when we approached them, they accepted our proposal.

Q. Would it be fair, considering that, wouldn't it be fair to say that the primary interest of these local organizers was in obtaining local bank assistance from any large bank, whether C&S or otherwise? A. I would think that if they, if we had not offered to do it, they would have gone to somebody else.

Q. And in fact, they went to somebody else, even before you offered to do it? A. Yes, in which event, we would have looked for another group of people.

Q. Now you have said that some of these banks which your holding company and C&S National are involved in are subsidiaries, some correspondent associates, you have both kinds in the metropolitan area; is that right? You have **[733]** both subsidiaries and correspondent associates in the local metropolitan area, Atlanta metropolitan area? A. Oh, yes, subsidiaries of our bank. Yes, I am sorry.

Q. The terms are hard to follow sometimes. A. Sure are. We have majority owned subsidiaries. There are three of them in the Atlanta area and then there are six associate correspondents in the Atlanta area.

Q. Is there any difference between—is there any difference in the level of—competition between the correspondent associates and your bank as opposed to your subsidiary banks and your bank? A. I don't really think so. The way I look at the competition is that they all compete, one against each other, basically for the initial contract with a customer. After that, there is a minimum of competition because you have got to realize that the correspondent associate and national bank and affiliates or subsidiaries, all sell the same product. It's very similar to four or five McDonald stands. As I understand it, these are franchised efforts which are not owned by the same people. Yet, they don't compete against each other. By the same token, our affiliates, subsidiaries, branches and the associate correspondents, as I see it, all offer the same product and therefore, the competition between them is minimal. **[734]** That is why I don't see where any competition is going to be lessened as a result of this merger, because they are all selling the same thing.

Q. Let me ask you about that, they are all selling the same thing. I assume when you say that, you mean the C&S block of services? A. Right.

Q. Right. That you have described before. Now that, obviously, breaks down into numerous component parts, checking account services, etc. etc., etc. Do they all sell the same thing, these parts of the same thing at the same price? A. No, not necessarily. No, not necessarily. Some of them would be the same price, some of them wouldn't be.

[735] Q. Well, is the price of these services, in your mind, a part of competition? Does price play any part in the competition? A. I don't know. That is really a hard one to answer. I am sure it must play some, but I don't think it plays near as much as the service that is rendered by one organization versus another one. That is just my opinion. And the reason I say that, if I am not wrong, I believe, for example, a little bank out in Clarkston has an entirely different service charge schedule than the bank at Tucker. So that this doesn't really affect our relationship with mutual potential customers.

Q. Let me see if I can understand exactly what you are saying here. A. I am not very good at it.

Q. I am getting a little confused. Let's start back a little bit. What would you say are the elements of competition between banks? A. Between all banks?

Q. Yeah, Bank A and Bank B. A. Well——

Q. How do they compete? A. Well, it is the way you handle a customer, the interest you take in him, the way you handle him. **[736]** It is the products that you have to offer, the range of products, like charge card, which was something that whenever this was going on, that nobody else had. Things like—oh, this program that we have where you skip a monthly payment on your installment account. These kind of things.

This, to me, is what is involved in competition between banks. It is a question of which bank is the more innovative and which bank is more—gives the impression to the customer of being more interested in his problems. That is what really is a bank. It is the people in the bank.

Q. Am I correct then in assuming that you don't feel that the price charged for checking-account service, the interest rate charged on loans, the interest rate paid on savings deposits, that those things aren't really as important, as far as competition goes? A. I didn't say that. I said they are not as important as the others. I didn't mean to say they weren't important, because obviously you couldn't charge $20 a check and expect to compete with somebody who charged something else. I mean, say, a nickel a check. But, I would think that what generally happens in the area of charges is one bank will set out some kind of schedule on the service charges, and everybody else will follow, or decide whether they don't want to **[737]** follow. Mostly, they follow. Banks are notorious at being followers.

Q. Well, let's take your subsidiary banks. Now, these are the ones, just to make sure we are clear on the terms, that you own a majority of the voting stock? A. Uh-huh.

Q. Who sets the service charge on checking accounts for your subsidiary banks? A. Just to be sure we understand ourselves about subsidiaries, are we talking about Avondale, Emory and East Point?

Q. That is what I am talking about, yes. A. All right. Well, then those would be set by Howard Starks or Bennett Brown, dependent upon—well, by Howard.

Q. How about loan policies and rates to the extent that those are fixed? A. Well, I am not a lending officer, and I really get over my head when I get to talking about loan rates.

Q. I was just wondering who determines those for your subsidiary banks? A. We set forth schedules, which I am sure you have seen that list the recommended rates, but on different types of loans from time to time, depending **[738]** upon the price of money, and these individual lending officers have to, within their judgment, lend money, depending upon whether it is—the risk involved and other things, to where they go up or down from that recommended rate. But, whether—well, go ahead.

Q. Well, just one last. How about the interest paid on savings accounts at your subsidiary banks; who would set that figure? A. We do.

Q. C&S National Bank? A. Uh-huh, Avondale, Emory and East Point?

Q. Yes, sir. Now, I think you testified earlier that part of the understanding between the correspondent associate, the banks you called correspondent associates, and C&S National Bank or the C&S Holding Company is that C&S will manage the bank? A. Uh-huh.

Q. Or, at least will influence the management. Does that management include making decision as to interest rates, service charges, et cetera? A. With the president of the particular bank, yes.

Q. Well, let me get that clear. Who, in fact, sets the service charge to be paid or to be charged on checking accounts at one of your correspondent **[739]** associate banks? A. Well, I think what would actually happen, and I believe, as I recall what actually happened was that somebody else decided to go—to change. I believe it was the Trust Company of Georgia, but I am not sure, decided the last time to make the last change that was made. And I don't know that anybody was—it was suggested by anybody. As soon as everybody knew that they had done it, everybody else says, "We have got to follow it. We have got to stay in line with them." None of the places that I served as a director actually discussed it, to my recollection. If it had come up while I was there, what I would have done, and which I am sure whoever was responsible for it did, was to sit down and talk with the president of that particular bank and say, "What is this going to mean to you competitively in this area where your market is. And do you think you ought to go up or do you think you shouldn't," and the decision would be made there, and you go from there. I believe, if I am not correct—well, no, go ahead.

Q. Well, if I can try to pin you down just a little bit. A. You can't pin me down.

Q. Maybe I can. Who would actually make the **[740]** decision, who would actually make the decision? Would it be the president, would it be the board of directors or would it be the C&S National people? A. Well, it would be the president, because here is the guy that would have come up in our organization that would have known whether we made the right or wrong decision, and when he saw what we were going to do, he would have probably followed it.

Q. But he would have made the decision? A. In the final analysis, yes, because he is the guy on the scene. He is the guy who deals with the local customer. He is really the guy who knows more about customer relations than we do, sitting down here in downtown.

Q. In a similar situation, would your branch managers have authority to make such a decision? A. They would certainly be consulted.

Q. Would they have the authority to actually make the decision? A. No, I don't think they would have the authority, but they would—their views would be given serious consideration, I would say would be an important element in the decision.

Q. Now, I think you testified just a few minutes ago that all the charges in all your correspondent **[741]** associate banks are not the same; am I correct there? A. I don't know, did I——

Q. Do you know whether or not, for instance, the checking account charges—— A. I believe they are all the same; I am not positive.

Q. The loan rates and policies, are those identical, to your knowledge? A. Well, the ranges are similar, but not identical. If you will take a classification of—now, to satisfy ourselves, we took all the business loans in all of the five or six, whatever banks are involved in this thing, and we listed them out off the

computer, because they were all on the computer. We listed them out by amount and by rate, and it showed a reasonable range of rates, comparing each one of these six five-percent banks with the nearest C&S National Bank or affiliate, subsidiary. I don't know whether they presented it or not? I don't know, but it showed us that there was nobody—there was nobody who was just simply sticking right by the rate charge, that the individual circumstances were being taken into consideration.

Q. Let me show you, Mr. Hall, a memorandum which is marked Government's Exhibit 191. A. Uh-huh.

[742] Q. Do you recognize that? A. I believe I do.

Q. Can you tell me for sure? Can you look at it? A. I recognize it.

Q. Can you look on Page 2 of that memorandum, the last paragraph? A. Yep.

Q. Could you read that for us? A. C&S five-percent banks?

Q. Yes. A. "compete across the board with C&S National and its affiliates and with each other for all customers of all types and in all locations for all types of business. And, of course, this goes the other way, too. The same goes for banking hours, new bank office sites and locations of other facilities. There are no exceptions to this general rule."

Q. That is, to me, that sounds inconsistent with what you just said. How would you—— A. Well, I thought I——

Q. Explain that. A. Well, I tried to explain it by saying that they compete between each other for the initial contact.

Q. All right. A. Keeping in mind that the most important thing **[743]** is the customer to get to the bank that is the most convenient for him, that is the best for him; that is, the most satisfied customer is the best customer. So, that is the competition. Once they are there, there is no real reason to talk about competing anymore to try to get that customer away from one

other bank, unless there is a change in the customer's situation, unless he moves or goes to work for somebody else or something like that.

Q. So they compete up to a point? A. Right, they don't compete to the same extent that—they don't compete with each other to the same extent that they compete with the First National Bank or the Trust Company or the Fulton, because, again, as I see it, they got one product and the Fulton National Bank's got another product.

Q. Mr. Hall, in your mind as a banker, what is the area of most competition between banks? Would it be fair to say that the most competition between banks is in acquiring the customer in the first instance? A. I think so.

Q. As opposed to keeping him? A. I think so. Probably, yes, I think that's right.

Mr. Sims: We have no further **[744]** questions, Your Honor.

Redirect Examination

By Mr. Hodgson

Q. Mr. Hall, that document from which Mr. Frisbie had you reading—Mr. Sims, excuse me. Mr. Sims had you reading, what is the date of it on the front page? A. July 12th, 1972.

[745] Q. What is its stated topic? A. Anti-trust actions between C&S banks.

Q. What is the reason that was distributed? A. It was distributed at the request of the attorneys.

Q. Mr. Hall, suppose the Branch Manager of one of the national banks made a compelling case to have his rate charges or any other factors of competition deviate from those of other branches. What consideration would be given in that case? A. Well, you said compelling. If it was a compelling reason, he

would probably be listened to. I am not sure that I visualize a compelling reason.

Q. But he would be listened to? A. He sure would, I think that is the key to all of this, these are the guys that are face to face with a customer, the people that know better than anybody else what the customer wants and what he will pay for it. You have got to listen to them.

Q. And if though your separate President might have the legal power to make the final decision and would in fact, have it, if he were trying to make a compelling case and didn't get it, what is the likelihood of his changing your mind? A. Nil.

[746] Q. N-I-L? A. N-I-L.

Q. Now as a matter of fact, Mr. Hall, you had some other de novo correspondent associate banks around the state in the past, have you not? A. Yes.

Q. Would you name them? A. Yes, yes, my memory is not as good as it should be. In addition to the ones I mentioned before, what did I say before, Dalton and Henry County. We also started de novo associate correspondents in Chatham County, just outside of Savannah, and I believe two in Richmond County—Augusta. The C&S Bank, Richmond County and I believe Citizens State Bank, if I recall it.

Q. Commercial and Savings? A. Yes, but anyway, both of them were banks that were started de novo and both of them are banks that were, then were merged into the Citizens & Southern National Bank after this suit was started.

Q. Each of these banks were started de novo and spearheaded by Citizens & Southern National Bank people? A. They were exactly the same as the South DeKalb or any of the rest of them.

Q. Or Belvedere? A. Belvedere.

[747] Q. Each of the five that are the subject of this litigation, with respect to the mergers, are de novo; are they not? A. Right.

Q. Without exception? A. Right.

Mr. Hodgson: No further questions.

The Court: You may step down.

Mr. Hodgson: I will call Mr. Dan Handley.

Whereupon,

ROBERT DANIEL HANDLEY, JR.,

was called as a witness by and on behalf of the Defendants, and having been first duly sworn, testified as follows:

Direct Examination

By Mr. Hodgson

Q. State your full name for the record, please. A. Robert Daniel Handley, Jr.

Q. What is your position with the Citizens & Southern National Bank, Dan? A. Executive Vice President, Branch Supervision.

Q. How long have you been in charge of Branch Supervision? A. Since 1968.

Q. What was your job before that date? A. Prior to that, I was Personnel Director for [748] the Citizens & Southern system.

Q. When did you take that job? A. That was approximately 1963—'64.

Q. What was your job before that? A. Prior to that, I was in the Controller's Department of the bank. Prior to that, I was with the bank in Macon, transferred here in 1961.

Q. When did you start with the bank? A. 1948.

Q. Did you have any personal experience with any of these banks getting organized? A. Just one.

Q. Which one was that? A. That was known as C&S South DeKalb.

Q. Where is it located? A. On Candler Road. It was a result of a piece of property that I believe Howard Starks had mentioned earlier today in his testimony, that he acquired in anticipation of the laws being changed that would permit us to either branch or have an affiliate bank. And in our responsibilities in branch supervision, we noticed that this area was developing rapidly and probably would need a bank before these laws could come into being.

He bought two pieces of property, in fact, one where the present bank is located on Candler Road and a **[749]** piece at Candler Road, I-20 and Rainbow Drive located adjacent to the Candler Shopping Center.

He thought the time was right when the area needed a bank. I contacted Warren Berry, one of the Branch Managers, South Expressway office, and tried to pick those people who are experienced to a point and could take on additional responsibilities and asked him if he would like to organize for us a Citizens & Southern Bank of South DeKalb. He was excited about this opportunity. My instructions to him were to look at the area, get with some other people back in the area and get with some other people, get with some other folks in the bank to see and decide what kind of bank we might need there, to determine what organizers we would want to include in the bank and Warren, working with Don Ingram, in our branch supervision, and Mr. Skinner, who is President of C&S Bank, Avondale, and Bill Jones who was, at that time, President of C&S Bank of Avondale came up with a list of organizers that they thought would, as we like to say, would be, I think, our kind of people who had the same kinds of interest we do in banking services

and that we could work with. These people were checked out as our customers——

Q. How do you mean checked out? A. By that, I mean checked out the background of the people the best we can through the regular research **[750]** access to be sure that the regulatory authorities, when we go to put in an application, there would be no question about the organizers. That way, we want the very best. This list was submitted to Mr. Lane. Of course, he knew some of them, some of them he didn't know. Based on our recommendation, he approved them.

We then, Warren, I asked Warren then to think in terms of the stock distribution to limit the Directors of the bank to 500 shares a piece, that he himself would have available, 5% of the bank, that they would like to distribute in the community, customers of the bank, neighbors of the bank, in small amounts approximately 45% of the bank. The remaining stock we would like to distribute among the employees of the C&S Bank and its associates.

The stock was over-subscribed. We had to cut it back. Essentially that breakdown was accomplished.

Q. Had there been any previous efforts that you are aware of to organize a bank in that area? A. We found out that there had been. I think Warren found out that when we started stirring around out there, a group of people previously considered it and I think even approached, this I am not sure of, approached the Superintendent of Banks and he had not been willing to or encourage them to carry it any further. **[751]** I might say that when Warren went out there, he found that both of these sites needed banks and it was our plan and we did go to the Superintendent of Banking and get the necessary application to file for the banks and we also at the same time asked for branch applications. We thought that it was desirable to apply for a bank and the branch at the same time. I guess our appraisal of the neighborhood and area was good because at that time, either the week before we started or the week

after, we were never sure, First National Bank of Atlanta was sponsoring a bank out there that has later been merged into First National Bank of Atlanta. It was a de novo branch of theirs. We did submit after getting all the necessary data, put together by research department of the bank, the necessary date, we did submit it to the Superintendent of Banking and to the FDIC.

The Superintendent of Banks, I believe, called Joe Hall and said that we have got a problem, we've got two banks that want to get in on the same corner and I need to ask you to withdraw part of it. So, I went over to see Mr. Jackson. Warren went with me. At that meeting, Mr. Jackson said we have got this bank that's being sponsored by First National Bank and that has an application where your branch application is. We would like for you to withdraw that and if you will, we'll approve the bank. **[752]** We felt very strongly that the branch was also needed and we elected not to withdraw.

He subsequently did turn it down, but did approve the bank. We had the organization meeting in the bank, in our bank, C&S National Bank in one of the rooms there with the organizers, Don Ingram who again, worked in branch supervision and has worked with this bank since its inception, Warren Berry, who has since been transferred to Milledgeville to assume the Presidency of C&S Bank of Baldwin County in Milledgeville.

Currently, the bank is being run on a day-to-day operation by the Assistant Vice President under the direction of Mr. Don Ingram.

[753] Q. Of branch supervision? A. Of branch supervision. We, incidentally, have had, or have had now for a year and a half, approval of that branch that was originally turned down by the superintendent, but it has been hung up in this litigation. Because, in the approval was requirements for additional capital, equity capital, and we have recently been able to get, through

all of the legal requirements, I guess, the superintendent to change that to debt. And this probably will be opened, and those customers will be served. This, of course, is ideal. Now, it is necessary because this little bank is bursting at the seams and can't serve its customers.

Q. Mr. Handley, I would like, at this point in time, to review some areas of services, mostly within the bank, in general terms that branch supervision may or may not offer to its branches, and, in your instance, to your correspondent associates in the Atlanta area, and ask you as briefly as possible to describe the areas of services furnished here.

Accounting. A. Well, currently we do all of the accounting for—by that, the bookkeeping, the proof and transit operation, the general bookkeeping of the branches, the affiliates and the five-percenter associates, in our **[754]** central operations area. We pick up this work by carrier, either by a helicopter or by truck, depending on what route schedules work the best.

Q. Are these all handled in the same computer as were your branches and the other? A. Oh, yes.

Q. Other accounts in this area? A. Oh, yes.

Q. Credit, credit administration. A. All of the branches in the affiliate banks and five-percenter banks in Atlanta divide themselves off into credit review committees. That is, review committees after the fact. They meet once a week to review two things, that is, new loans that they have made as to the creditworthiness, things that they might not have picked up in tying them up, and maybe self-criticizing what they might have done better to make it a better loan. They review those loans that have gone sour since they were put on the books.

Q. Do they have any assistance from your staff? A. Oh, yes, we have a senior credit man who attends each of these meetings, offer technical and professional credit comment and criticism. We provide for each of the branches in the banks the credit review service where we go out and will review all of the loans

[755] on line sheets, making criticisms and suggestions. And then give them back to the branch manager or the bank president and ask them to review them and take whatever corrective action is necessary.

When this is done, we, in branch supervision, go back and go out with these credit sheets to determine what helps can be done to make them better loans.

Q. To what degree do you utilize comparative performance figures? A. Extensively.

Q. Comparative with what? A. With each other.

Q. Five percenters as well as branches? A. Right, and the banks, we——

Q. What about a loan gone so bad that it needs serious collection effort? A. Well, we have, we think, a pool of people who can get in and help some. Of course, some of our people in branches and some of them in the banks have varying levels of experience. Some of them can handle situations, that is, branch managers or bank presidents can handle a certain type of credit without too much difficulty. Then there are those who don't have particular experience in a certain-type critical situation, and we are able to step in with our credit [756] people and maybe work with them, or even just take over the line itself. I don't mean take it off the books, but I mean take over the loan, as far as the customer is concerned.

Q. The collection of it? A. And trying to get collection of it.

Q. Participations. A. Well, we are constantly in participation with the banks, particularly in this area where this is just tremendous real-estate land development and commercial construction. All of our banks need this.

Q. Payroll accounts. A. We do all the payroll accounting as far as credit, too. We do this; we have in a, in our branch supervision, what we consider, I guess, as a consumer-loan expert that follows constantly the type loans that are going on in

the banks and the branches. If we detect what we think is a problem, a credit problem, he will go out and review samples of the accounts and procedures to be sure that we are not getting off-track in any of the offices and if we need some re-training of the people, pull them back in, or, if we have made a mistake putting a guy out, we put him in another spot where he can be re-trained.

Q. Now, the general, large area of personnel. **[757]** A. Well, personnel, of course, I think that——

Q. You were in charge of systemwide personnel? A. That is correct. And we recruit personnel in the system for all C&S banks, and we do utilize all offices for training. We get a man in that is a career trainee or management associate, as we call them; we may take one and put him out at Tucker to learn the initial banking, I mean put him at Emory. We may put him at the South Expressway; we bring him into the credit department for cross-training purposes. That is so that when we have a branch manager's job, a new branch that we will go into of the National banks or any of the affiliate associates, we look through the personnel roster of all C&S associates and officers and we attempt to pick the best man, regardless of where he is, and make this job available to him.

Q. Do you furnish any sort of emergency personnel pool? A. Yes, sir, we have a group in the branch supervision. We do —it is a constant pool—but in the summertime—hire school-teachers and this sort of thing for clerical fill-in support, and that is essentially the fill-in support, of course. If a guy at a bank has some—a lot of people out at school or what-have-you, we can send temporary officers out for help.

[758] Q. Who does the payroll for the five percenters and branches? A. Our bank payroll department, all the same.

Q. Fringe benefits, vacations, holidays, service clubs. A. Administered by the assistant personnel department.

Q. Deposit accounts, both demand and savings; are they handled likewise? A. Yes, that's right. In one building where they are all handled by the same people.

Q. Where is that? A. Well, we have two locations now. One is at Mitchell Street, and we have recently moved part of it to Northlake Mall for transportation convenience.

Q. New features of deposits and savings accounts are made available to each alike? A. Yes.

Q. What is ready reserve? A. Ready reserve is an overdraft feature that we promote, too, on approved credit, where a person can apply for, and, based on his creditworthiness, can be given a line where he can overdraw his account. It is transferred from his charge account to his checking account.

[759] For instance, if a person had a ready-reserve account at the C&S Bank of Sandy Springs, and had a ready-reserve account and overdrew at $200, we will say, and then $200 would be transferred from his C&S charge account to his checking account automatically.

Q. Well, tell me something about your C&S charge account. What is that? Is that Master Charge or BankAmericard? A. That is our independent charge. We are members of the—I believe, the I-Card.

Q. Interbank? A. Yes.

And, of course, this is available to anyone, obviously, other than deposit customers. We have in our bank in the Atlanta area five 24-hour banking machines that take deposits, make loans.

Q. That is your Instant Banker? A. That is the Instant Banker. We have one that is located at Sandy Springs, and the other four or five are located at branches. The attempt was to place them around where they would be available to as many of C&S bank customers as possible. Now, this is acti-

vated by a C&S charge card, I-Card holders, where their credit has been pre-approved for this sort of thing.

[760] Q. C&S charge cards issued by the C&S National Bank? A. Yes, it is.

Q. Now, in the area of general administration of these operations, what about the making of goals and projections and objectives by these officers, branch managers? A. We believe that the way to run good banks is to encourage people to set goals for themselves, and then have another party to review them, and then periodically check them. To that end, we devised a system several years ago of setting goals. We call it the goalpost, for lack of a better identification. At the end of each year, we set goals for next year in these categories, along with forecasting the budget. And I think the goal-setting is a vehicle to set your sights on how many customers you can serve as opposed to forecasting as to how many dollars of business you will do. And we then, we, by branch supervision, I mean we review with the managers and the presidents of the banks quarterly the results of their progress as it relates to a goal. And we also make this known to their associates, by that, their branch-manager associates and presidents, competition.

Q. Do you have any appraisal of performance of **[761]** managers and presidents? A. We do.

Q. Other than these goals? A. Well, we do. We do that on the operating statements, that is, the return on assets, the loan-loss ratios, again, the goals of people that they serve, and also, informally, the customer service. And this is sort of an intangible thing in that we get—obviously, we don't get too many, but we get more than we want, that is, customers' complaints. When they can't get satisfaction, for instance, if a customer calls Bobby Morris, the president out at the C&S Chamblee and he can't get satisfaction or he thinks he can't, he will probably end up calling Mr. Lane or Dick Kattel or myself to step

in and see what we can do. Usually everything has been done, but this is what the customer is asking for.

Q. Now is this reflected in salaries or other compensation and rewards to the officers and managers? A. Well, I think this is the consideration that we take in reviewing the salaries of the presidents of the bank and the managers of the branches. That is the results for the year, the ability to produce a profit, to generate new business, all these things.

Q. Mechanically, though, Mr. Handley, how do **[762]** you affect, let's say, the president's salary at Chamblee, once you have made these appraisals? How did you do it with Mr. Morris? A. Well, I would meet—some of them were different. This one was where, once a year, in the late fall or early winter, I would go out and sit down with the president of the bank and two or three of the directors and review with them the performance of the president, and we would recommend to the board a salary based on performance for the president. And then, of course, the president of the bank knows the performance of his subordinates better, and, based on previous conversation that I would have with the president, we would come up with the figures.

Q. These recommendations inevitably followed or not? A. Yes.

Q. Describe the advisory director function that you filled on occasion. Let me ask you this, on what boards in the Atlanta area did you serve as an advisory director? A. Well, when Howard Starks moved to retail banking, we had an awful lot of things going, so it was necessary for us to spread our time. So some of the boards I don't attend regular, but I try to put in **[763]** appearances at the board meetings, irregularly, all of them irregularly. But there's somebody from our department that attends the meeting, of course. There are certain times when it just can't be possible, but, in addition to that, I meet with the

board members over the telephone, or we might run into each other or some other reason.

Q. All of this in addition to your constant— A. Oh, yes.

Q. ——relations with the management and staff? A. Yes.

Q. How available is all of the packages of sales promotions and public relations and market research, literature that you have in the National Bank? How available is that to the five percenters? A. Automatic. By that, anything—I mean anything we have as a new sales tool, any new product, any new service.

Q. Helicopters. A. Oh, yes.

Q. Ground transportation. A. Yes.

Q. Central money vault. A. Right.

Q. Centralized purchasing. **[764]** A. Right.

Q. Equipment. A. Right.

Q. Security system. A. Right. Yeah, in that connection we do—with the security problems now, we, I guess, have had security problems, and we have a security department in the bank that assists—well, really, has written a security manual that is used by all of the C&S banks and branches, and is audited by our security people to be sure they are following the procedures we had recommended and set up, all the equipment that is necessary, even beyond the—I believe that is required by the F.D.I.C.

[765] Q. Blanket bond? A. Yes.

Q. Installment loan billing? A. Yes.

Q. Educational programs? A. Oh, yes.

Q. Including the law seminars? A. Yes, and of course, when we participate, not only in in-banking training, but when we use some of the management schools, Harvard, Stanford and so

forth, we have reserved for us spots, each year our educational people go through, we pick the people who can benefit most by this. We pick people, regardless of whether they are in the national bank, branches or affiliates, or five percenters.

Q. Money management? A. Yes.

Q. Supplying capital needs? A. When necessary.

Q. When you say supplied, do any of these officers, no distinction is ever made as to whether they are five percenters, national or affiliates? A. No.

Mr. Hodgson: He is your witness.

Cross-Examination

[766] By Mr. Frisbie

Q. Mr. Handley, your testimony sounded an awful lot like the affidavit I saw with your name attached to it at one time, so I could follow it very closely. Which banks come under the supervision of the branch supervision department now? Which categories of banks? A. Well, in that connection, it is the branches in Atlanta, that is the City of Atlanta and recently, those that might have been organized in DeKalb County. The five banks that I guess are in question here today, Tucker, The C&S Bank of Cobb County, C&S Bank, Rockdale County.

Q. Are the affiliates also under branch supervision? A. Yes, I'm sorry.

Q. Do you have any dealings at all with what has been classified here today as regular correspondents, no ownership of five per cent? A. No, sir.

Q. Are you the person today who, in your department is the one right now that works closely with the correspondent associates? A. Yes.

Q. If, speaking very generally, if a correspondent associate bank had some kind of problem, they want to discuss with C&S National, would you—only I would say this, only in that geographical area that I identified. **[767]** A. Okay.

Q. I understand. So, would you be the person in that department that would be most likely to be contacted for any problems? A. Indirectly or directly?

Q. How many—excuse me. A. We have three divisions in the department and sometimes they go to a division.

Q. How many people are in that branch supervision department? A. We have three division men, we have a—we have three what we consider commercial credit men. That are men who are expert in commercial credit. We have personnel or consumer credit and we have an operations man. That's the man that has experience in the operation of tellers, all the procedures that—I didn't count them, that is it.

Q. Would be about a dozen or so? A. Yes.

Q. Do you own any stock in any of the banks involved in this lawsuit? A. Yes, I do.

Q. Five per cent banks? A. Yes, I do. Not all of them, but some of them.

Q. Did you take out any loans to purchase this **[768]** stock? A. Some of them I did, some of them I didn't.

Q. Did you get a preferential interest rate? A. Yes, I did.

Q. And you still own some of the stock at this time? A. Oh, yes, I do.

Q. We have gone through these services pretty thoroughly. I need to get some dates at this time about some of these programs. Can you tell me approximately when the goal post program started? A. Yes, that probably started out, this is three years ago.

Q. '69. When did the meetings that have been referred to as the Wednesday morning meetings or credit meetings, is that the same meeting? A. No.

Q. They are two separate meetings? A. Right.

Q. Credit meetings follow the Wednesday morning meetings? A. Well, for clarification, Wednesday morning meeting is a regular meeting that Mills Lane or the President of the bank, is irregular or regularly held, which with the Branch Manager, President of the Bank and **[769]** major department heads come down at 6:30 or 7 o'clock for a meeting. The reason many of them, for convenience sake, their credit meetings are held following this so there may be some on Thursday, some on Monday, some on Tuesdays.

Q. Do you know when these Wednesday meetings started? A. Before I came to Atlanta, 1961.

Q. Do you know when the credit meetings started? A. Before I started in Branch Supervision. This was in existence in Howard Starks' organization. We obviously have had to expand it because of the people.

Q. Did you start the program of personal and bank performance appraisals that has been referred to? A. Personal?

Q. Was it started while you were in Branch Supervision? A. I started the personal bank appraisals, I think probably I started an attempt to objectively evaluate branch managers and bank Presidents, I would say, yes, I have attempted to do that.

Q. Do you know when the first Director was put on the Board of a correspondent associate? A. Of——

Q. Who was an officer of a C&S National? A. Who the first officer of the C&S National **[770]** Bank that was put on?

Q. In period of time, do you know when that time was? A. No.

Q. When did the customer service audits begin? A. That was something I also put in, I guess about 1968 or '69 to evaluate the customer service.

Q. Now when did the credit audit start? A. That goes back—that goes back prior to this time, 1968. That was in operation and we had that in full blast.

Q. When did you start rating the performance of each correspondent associate President? A. Well, on a formal basis?

Q. Was it started during the time you were Branch Supervisor? A. I don't think so. This is my system of evaluating.

Q. Did you ever have the power to determine his level of discretionary cash profit sharing? A. Yes, sir.

Q. You do determine that? A. Yes.

Q. Was the President aware that you have the power to do this, President of the correspondent associate [771] banks? A. I can't answer that. I would assume so. Mr. Parker did.

Q. Did you actually review the President's salaries and make recommendations to their Boards? A. To some directly, some indirectly.

Q. Was your approval required by that Board? A. I believe they expected me to make this evaluation and determine for them, based on my comparison of their performance between bank Presidents and branch managers.

Q. Did the President know you had this power or influence also? A. I would assume so.

Q. Would you think it would be reasonable to assume that this might have had some bearing on the fact whether these Presidents followed your suggestions or advice in these appraisal meetings, goal post meetings you had? A. I would think that they would probably want to do well on the criteria that we used because it obviously results in reward.

Q. When you were talking about the credit services that you have, I believe you said something to the effect that the Citizens & Southern credit review staff would **[771A]** analyze and rate banks, using uniform set of criteria? A. Yes.

Q. Does this have the effect of stabilizing the range within which the price is paid for loans by customers of the correspondent associates, that will be made? A. It shouldn't, this review is primarily, I would say primarily, by that I would say the review itself is 100% to determine the credit worthiness of the borrower or company and how well the loan is being buttoned up or administered, the credit review, and that we really concern ourselves with credit worthiness.

Q. But you stated also that you review the comparative performance of all banking officers in approving charge-offs, probable losses, things like that? A. I said review performance based on operating statements. The assets are made up of a multitude of in-put, that is control of expenses, ability to gain deposits so you can rent it out, this sort of effective utilization of people. I'm looking really at the return on assets, rather than any particular item.

Q. When you are reviewing comparative performance between these different persons at different bank branches, and locations, don't you think this would have the effect of stabilizing the range wherein the price is paid for loans would be made by correspondent associates? **[772]** A. No, sir, I wouldn't think so. I think the main thing, at least I preach this, that the way to make the bank prosperous to solicit deposits. If you get deposits, you can make money. If you can control your expenses, you can make money. Some banks, some branches are in heavy loan demand areas, some aren't.

Q. Is most income from banks, does the most income from banks normally come from loans? A. Normally.

[773] Mr. Frisbie: Your Honor, I doubt if we are going to have very many more questions for Mr. Handley. If we could have

about a five minute recess at this time, we might forestall further questions.

The Court: All right. We will take a five minute recess.

(Whereupon, a recess was had.)

By Mr. Frisbie

Q. Mr. Handley, we were talking about this discretionary cash profit sharing program. Who funds this program? A. It is funded by the various banks involved.

Q. Who does the money that—let's take the Chamblee, for instance. If Chamblee contributes X dollars into this fund, who does that money belong to? A. To the officers and employees of the Chamblee Bank.

Q. Isn't it true that the Board of Directors are the only persons who have the authority to distribute these funds of Chamblee? A. This money is and—an anticipation is made, and this money is accrued, and then it is disbursed. The employees get a fixed amount and the officers, based on performance. This money is just as the salary, the final authority, I am sure, rests with the Board.

[774] Mr. Frisbie: I have no further questions.

Redirect Examination

By Mr. Hodgson

Q. I have just one question, Mr. Handley. If a customer of the East Point Bank or of the National Bank were to be in Chamblee and wanted to make a deposit to his account in East Point or National at the location of the Chamblee office, would this be possible? A. Yes, sir, and it's frequently done.

Q. How would it be handled? A. Well, this deposit is taken. Of course, cashing of checks is no problem. The deposit poses a little additional problem. The deposit is accepted and a re-

ceipt is given, a receipt—I forgot the wording, the wording has been approved by the regulatory authority, saying the deposit is received for transmittal, but it is transmitted to the central bookkeeping department where the credit is given to the person's account.

Q. The customer gets his receipt right there? A. Right.

Mr. Hodgson: Thank you, sir.

Recross-Examination

By Mr. Frisbie

Q. On that same subject, Mr. Handley, actually it is not deposited if you drop in the Chamblee—actually **[775]** the money is not deposited at that—if you have your account at Emory? A. Oh, no.

Q. Is that correct? A. That's correct. Actually, it is accepted for deposit at East Point, I think, as an example he used. It is accepted at Chamblee for credit to the man's account at East Point, and actually has to be transmitted.

Q. All right. So, actually, it goes by mail or by carrier? A. Carrier, our normal carrier, right, just along with our normal work, is sent to the central proof.

Mr. Frisbie: Thank you.

Mr. Hodgson: Judge, it is five o'clock. We just as soon suspend for the day, if it suits you.

The Court: Well, if we are on schedule, all right.

Mr. Hodgson: As far as we are concerned, Judge, I think we are going to meet our schedule just fine.

The Court: Suits me, too. We will stand in recess until 10:00 o'clock tomorrow.

(Whereupon, the proceedings were recessed until 10:00 o'clock A.M., September 29, 1972.)

[776] **Volume V**

(Title omitted in printing)

Transcript of proceedings had before The Honorable Charles A. Moye, Jr., Judge, United States District Court, on the 29th day of September, 1972, commencing at 10:00 o'clock A. M., in Atlanta, Fulton County, Georgia.

[777] Mr. Doyle: I will call Warren Berry to the stand.

Whereupon,

WARREN L. BERRY

was called as a witness by and on behalf of the defendants, and having first been duly sworn, testified as follows:

Direct Examination

By Mr. Doyle

Q. State your name for the record, please. A. Warren Landem Berry.

Q. Where are you employed; in what capacity? A. I am employed as president of the C&S Bank, Milledgeville and president of the C&S South DeKalb Bank.

Q. Would you outline your employment history before you became president of C&S South DeKalb Bank? A. Well, I had been with the C&S for, as of this December would have been sixteen years. During that time I was branch manager at the South Expressway office for a couple of years. I was branch manager previous to that at the Roswell-Wieuca office for approximately four years. Previous to that period of time, I did various things, including assistant branch manager, Stewart-Lakewood office, Cascade Heights branch. New business division, downtown Atlanta new [778] business, I was manager of that department. I at one time took an animated display

throughout the State of Georgia called "The Magic City" and displayed that to various banks.

Q. When were you first selected to be president of C&S South DeKalb, what year? A. That was in 1969.

Q. Who first selected you to be president of C&S South DeKalb? A. Well, Dan Handley approached me about the possibility of me becoming president.

[779] Q. And this was prior to the organization of the bank? A. Yes.

Q. Would it refresh your recollection, Warren, the bank was organized in 1967 instead of '69? Is that not right? A. I don't believe that is correct.

Q. Am I wrong? Okay. A. I believe it was 1969.

Q. When you were first approached by Mr. Handley and talked about the organization of the new bank, were you encouraged by him to purchase stock in the bank? A. Yes, very definitely.

Q. And did you do so? A. Yes.

Q. Was it financed? A. Yes.

Q. At a favorable rate? A. I would say so.

Q. How were the directors of your bank selected? A. Well, I got together with some of the other officers of the C&S National Bank, and also the correspondent associates and the affiliate banks, and tried to find the best people in that area. I didn't know a **[780]** lot of people in the South DeKalb area, and I tried to determine who would be the best people in that area with help, from such people as Don Ingram, who at that time, I believe, was president of the C&S Emory Bank; Bill Jones, who was the president of the C&S Belvedere Bank; and other individuals, including Dan Handley in branch supervision.

Q. How was the stock in your bank placed? A. We placed it—well, first of all, when it was determined that we were going to be putting up a bank in South DeKalb, I had numerous requests for stock, and we tried to allocate that stock between friends of the C&S, employees of the C&S, officers of the C&S, and we also tried to allocate some of it to the community, people in the community through the board of directors.

Q. In selecting directors and in selling the stock, were the potential directors and stockholders assured of C&S management and support of the new bank? A. Certainly.

Q. Were eventual merger anticipations discussed at that time, as and when the law permitted? A. Yes. I believe that some of the directors at our organizational meeting did bring up that possibility.

Q. When you went out after the physical facility **[781]** was up, did you feel like you were leaving C&S when you went to C&S South DeKalb? A. No.

Q. I have got stacked up here a bunch of guides and manuals, which, for the record, are Defendant's Exhibits 270, 298, 309, 310, 311 and 312. Did you have the benefit of these guides and manuals in your C&S South DeKalb Bank when you were there? A. Yes, I did.

Q. Do you or do you not agree that the operations and policies of C&S South DeKalb are subject to C&S National Bank's management and control through you, as you heard it testified to by Joe Hall yesterday? A. I would say that that would be true.

Q. Do you regard the common logo and all the other common identification with C&S as important to C&S South DeKalb Bank? A. Yes, very definitely.

Q. Do you find customers in your bank and other branches of the C&S Bank using the offices interchangeably? **[782]** A.

Yes, very often. I think also that many, many people put deposits in that bank simply because it's C&S.

Q. Ail right, sir. Would you tell the judge how the loan to deposit ratio has run at South DeKalb? A. Well, it's a very high lending area and as a result, the loans have increased deposits or been greater than deposits in the area.

Q. You have more loans than you have deposits? A. Yes.

Q. You have handled that through what means? A. We sold some of these loans to C&S National Bank. When you have banks, you do have some banks that are deposit gatherers, some banks that are lending banks, and by our affiliation with the C&S, we can go ahead and service the particular customers in that area.

Q. If we had not filed the application to merge when we did, would your bank's correspondent associate relationship with Citizens and Southern have continued as it has in the past, from your standpoint? A. I think so.

Q. To what extent is C&S South DeKalb facing competition from new branches of other Atlanta banks? A. Well, I would say extensively. We have several branches that are already up in our area, have **[783]** been established within the last couple of years.

Q. You have been president of two correspondent associates and manager of several branches of C&S. What is the difference between them?

The Court: Between the ones which he has managed, or between them and something else?

By Mr. Doyle

Q. What is the difference between managing a branch as you have managed, and being a president of a correspondent associate, as you have been president? A. I would say primarily the only difference would be that you have a Board of

Directors in the bank, in the bank that is an affiliate bank. Whereas, although at South DeKalb, I mean at South Expressway we even had a similar Board of Directors. There was a Board of Advisors in that branch, we had a Board as such. I would say there would really virtually be no difference in the two.

Q. Is there rivalry among C&S branch managers? A. I would say there was competition between branch managers, yes.

Q. In your opinion, would the granting of the mergers applied for here tend to lessen competition? A. No.

Mr. Doyle: He is your witness.

Mr. Kinkaid: Just a moment, if Your Honor **[784]** please.

Cross-Examination

By Mr. Kinkaid

Q. Mr. Berry, I'd like to show you a copy of a letter I received a few months ago, and ask you to notice that it's on the C&S Chamblee stationery, but take a look at it, and I would like to know whether you know of C&S South DeKalb sent out a similar letter to its customers. A. I don't recall sending out this specific letter, but I very well could have. I would have to see my letter to testify that I sent it out

Mr. Kinkaid: Your Honor, I have to apologize, we seem to be caught short-copied, if there is such a word, as this is the only one I have. That one, of course, was sent out by Bobby Morris of C&S Chamblee. Do you have any recollection of whether you sent out a letter in similar vein?

Mr. Doyle: Excuse me; can we have an opportunity to read this before examination goes on about it?

[785] Q. Do you recall sending out a similar letter to your customers? A. I do not but it could very well have happened. I don't recall it, no.

Q. I would like to show you a rather famous ad that appeared in the Tuesday issue of the Atlanta Journal November 23, 1971. I presume defense counsel is sufficiently familiar with that ad that we will not have to produce a copy for you.

Mr. Doyle: We know about it.

Q. Have you seen that ad before? A. Yes.

Q. Can you recall whether you may have—whether or not you sent a copy of that ad to your customers of South DeKalb? A. I think so.

Q. Mr. Berry, you indicated that so far as you were concerned, except for the existence of the board of directors, there was no difference between managing a C&S National branch and running C&S South DeKalb. A. I said virtually no difference.

Q. All right. What was some—since it is "virtually," are there some that you would like to—— A. Well, there are some legal and technical differences, but as far as the customer is concerned, [786] doing business with South DeKalb or Belvedere or Stewart-Lakewood, which is a branch, or South Expressway, it doesn't make any difference. It makes no difference to them.

Q. But, I think the question was what is the difference between managing these two operations? What was the difference to you? A. Well, you have—the end result is the same. In other words, the end result of accomplishing promotion of the C&S style of banking and our way of doing business is the same. The means that go about those ends might differ because of legal technicalities, but, other than that, that would be the primary difference.

Q. Weren't there differences between being a branch manager and running South DeKalb? Weren't there differences in terms of your ability to, for example, change the service charges on your checking accounts? A. Well, I would like to think that as a branch manager that I certainly, if I had a strong feeling about service charges or any other thing, that I might very well be able to prevail in making changes.

Q. Now—— A. However, I would like to add this, that I would be very careful before I would do it because I wouldn't want to confuse the customer.

[787] Q. Now, by that, I take it you mean that if at the South Expressway, for example, you had changed your service charge and a C&S National customer who happened to bank primarily with another C&S Bank branch determined that the South Expressway office was offering a different service charge, he would be a little upset, wouldn't he? A. Well, not—I don't know about being upset. I think it would be confusing.

Q. As a matter of fact, aren't the service charges offered at all C&S National branches in Atlanta, aren't they the same? A. In Atlanta.

Q. Uh-huh. A. I think so.

Q. And isn't that also true of interest paid on passbook savings accounts?

Mr. Hodgson: Excuse me. Your Honor, I am not sure if Mr. Kinkaid is asking the witness if he knows as a matter of fact that each of these rates and charges are the same at each of these branches or if he is asking for his conjecture as to what is going on at these branches. He has not testified that he has been at all of them.

[788] By Mr. Kinkaid

Q. Well, do you happen to know? A. I don't know for a fact, no.

Q. Now, if, as a matter of fact, they were all the same, would that surprise you?

Mr. Doyle: I object to that question as pure as conjecture, if the Court please. He has already stated he doesn't know the fact.

The Court: It wouldn't add much to the record to determine whether this witness would be surprised.

Mr. Kinkaid: Excuse me, sir, I couldn't hear.

The Court: I said it wouldn't add much to the record to determine whether this witness would be surprised.

Mr. Kinkaid: I don't think it adds much to the record as to whether he thinks the acquisition at South DeKalb would lessen competition, either, but that's beside the point, perhaps.

[789] Q. (By Mr. Kinkaid) As branch manager of South Expressway, could you have increased, for example, what was the rate you were paying on passbook savings accounts? A. I believe on passbook savings——

Q. Uh-huh. A. I'm not sure what you're referring to when you say passbook savings. What do you mean?

Q. This is the accounts where someone comes in, wants to put his money away. This is not a checking account, not a demand account, he's going to put his money away. He makes a deposit and the deposit is entered into some sort of record that is usually, as I understand it, called a passbook. He has paid a certain amount in. A. We have three different kinds of savings; passbook would not be one of those. We do not give customers records books on some of our type savings. So, ask me your question again.

Q. All right. Was there any type of savings account offered at South DeKalb on which South DeKalb was paying three and a half percent interest? A. We had a regular savings account that was paying three and a half percent interest.

Q. You called it regular? A. Regular savings account, right.

Q. Now, when you were at South Expressway, if in **[790]** your opinion it would have been some advantage to you to pay four or four and a half percent, would you have been able to do so?

Mr. Doyle: I object to that question, being objectionable on two grounds. One is asking if in his opinion, we have not testified, found out whether it would be in his opinion, and two, four and a half percent is legally impermissible under the law. I object to it on both grounds.

The Court: Overruled.

Mr. Kinkaid: I think his, what his state of mind as to this matter is, is quite relevant, Your Honor. He has testified as to the difference between managing branches and managing a correspondent associate, and that has to raise questions of how he approached both institutions.

The Court: Well, we have the substantial record on the question so far. I think that is an area where we can continue to get new questions even if we stay in session for a month. I'd like to try to pin it down to the ones that add to the record.

Now, as I understand the record so far with respect to the five percenters, there is a unanimity of testimony among the defendants' **[791]** witnesses that there is very little difference between their operation and that of a branch. Now, I take it that there is inherent in those answers, and I think the witnesses express it, the thought that, of course, there are legal differences, there is a corporation there. Over here is a part of the bank. Therefore, the difference, I think, would be developed in a necessity for, say, persuasion with respect to the five percenters as opposed to that with respect to the banks, the branches. And then, if that be the case, it seems to me that the question such as you're asking would be, we could get one if, in your opinion, there should be a diversion, a necessity for a diversion

in procedure, rates, whatever is applicable to the five percenters as contrasted to the branches or the named business. Could you accomplish it? What would be the difficulty of accomplishing it? I think that is, of course, relevant to the record. I'd like for you to do it, let's get it in there once, develop it fully. I see we are going to have a number of witnesses in the same category. Let's see if we can handle it once and not go over it several, on several occasions.

That is the record, if you think that there is a—that it's not an accurate characterization **[792]** of it, then obviously you have got liberty to develop it further.

Mr. Kinkaid: No, I think that's really what I was trying to get to. I was going around Robin Hood's barn to get there. The main thing I was trying to establish is the difference in, the difference in operations seems to me would include whether or not the president of the associate can make these major competitive changes without being stopped by his C&S associate.

The Court: It seems to me——

Mr. Kinkaid: What, on the other hand, can branch managers do in the same regard.

The Court: Tell me if I'm wrong. The branch manager can do it because he would be, as I take it, the operating authority of the president, Board of Directors, whoever is running C&S National Bank. He has got that authority and he can do it. He may have an advisory board, still he would have the authority.

The legal authority in five percenters is in the Board of Directors, duly elected or appointed officers and the authority to make the change must come from there. Then, you have the intangibles of the trust, the confidence, the belief that C&S's **[793]** way of operating is the best way. He may believe that three and a half percent is better for the bank than four and a half or whatever the figure may be. He has got the legal prob-

lem to get over. I construe the testimony as saying that that has proved to be no great problem because all that has been necessary is for a good manager to exert, use his persuasive powers and explain the benefit of the C&S system, and it's just followed in due course.

Why don't we get the witness to say, give him a hypothetical, suppose he thought that there was a, that three and a half percent was too low to attract savings accounts in this neighborhood where other banks were offering whatever they might be offering. He wanted to go up a quarter of a percent. What would he do? Would he have problems? Has he run into any situations like that?

[794] Q. Well, Mr. Berry, if you had wanted to raise your regular savings account interest rate when you were at the South Expressway, what would have been the procedure that you would have followed? A. Well, I would have communicated with branch supervision, discussed the matter with them, tried to determine—I believe that they would have tried to determine from me my reasons for wanting to make this change, and I would have communicated with them to determine whether or not it would be in the best interest to do so.

Q. Now, if branch supervision indicated disapproval of this move, what would you have done? A. Well, I—that depends, really. I might have accepted that or I might have appealed it to someone else, if I felt very strongly about it. I might not have. I might have discussed the matter further. I probably would have. Unless I felt, depending on how strongly I felt on something like that.

Q. To whom would you have appealed if branch supervision didn't go along with you? A. Well, I might go to the president of the C&S National Bank.

The Court: Suppose he said no. Would you then go to your board of directors, **[795]** the board of directors of the five-

percent bank and say that you have been advised to the contrary from the C&S; I feel strongly about this?

Mr. Doyle: Excuse me, if the Court please. That question was directed to the time he was a branch manager at South Moreland. A. South Expressway.

The Court: I apologize.

Mr. Kinkaid: I was taking the branch first.

The Court: I apologize.

By Mr. Kinkaid

Q. Okay. So you are still branch manager and you have been turned down by branch supervision, and you are going to Mr. Lane and he says, "No, I don't care for that." A. All right, sir. All right. I would have had to comply with that. Whatever the amount of the charge was, or, if I still felt strongly about it, I could have left the bank.

Q. On the other hand—— A. Might not have eaten very well.

Q. On the other hand, now, you are at South Dekalb. [796] A. Right.

Q. And you want to do the same thing. In that case, would you have gone to branch supervision for anything? A. I certainly would have. I would have communicated with them and probably the—I would have tried to find out, tried to determine what the best thing is for the area, the same way as a branch. I would have tried to determine what—why a change is necessary and trying to look out for my area of responsibility, to be sure that we do the best job there. And I would have pursued it in that light.

Q. Yes, sir. Of course, we were setting up this hypothetical and it was——

The Court: You had determined already that it was necessary.

Q. Yes.

The Court: The basis of the question is that your analysis of the neighborhood indicated an increase in rate was necessary.

A. All right, sir.

The Court: Then, as I understand it, you discussed that rate with branch supervision.

A. I would.

The Court: All right.

[797] A. I would get the pros and cons from them, and I would rely very heavily on what they suggested and recommended.

By Mr. Kinkaid

Q. Now, if branch supervision didn't care for the idea, but you still felt strongly about it, now keeping it comparable to the hypothetical as to the branch, now at that point you still feel strongly about it; they have not been able to convince you that you shouldn't go up. What do you do then? A. Well, let me say this, that, first of all, I would give—I think that I would have to recognize that they have a lot more resources to determine what would be an appropriate amount than perhaps I would, and I am saying this to say that I would give a lot of weight to their recommendation, because they know about the cost accounting, which I do not know what it costs the bank, and this kind of thing.

They help me in this area. If we disagreed, which I think would be highly improbable, because, as I say, we are both working for the same ends, so I would say that I would probably pursue—I would probably go to perhaps Mr. Lane or Mr. Kattel and discuss it with them. If I felt like the C&S and I were not in agreement on a price, then I could go to **[798]** my

board and discuss the matter with them. I think the chances of something like that happening, they have never happened, and I think it would be highly improbable that they would.

Q. But, if they did, would you have been able to go to your board and, if you could convince your board that it was a good idea to make the change, could you have made it? A. I could have legally, or they might have gotten another president if, you know, I could have—certainly I could have done it, yes. If the board didn't agree, then we would have to—we would have to confront that situation.

Q. All right. Now, if your own board at South DeKalb didn't like what you wanted to do, as you say, they could have gotten a new president. Suppose branch supervision didn't care for what you were doing, now, would they have been able to get a new president out at South DeKalb? A. Well, I don't know. I mean I don't know about that. I would say this, if I felt strongly about a price in my area, that the ultimate authority would have to rest with me and my board of directors.

Q. And when you were the branch manager, if you insisted upon doing something that branch supervision **[799]** didn't want you to do, they would get a new branch manager, wouldn't they? A. That would be correct.

Q. Either they would fire you or you, yourself, would go somewhere else? A. That would be correct, yes.

Q. I think you indicated that you had heard Mr. Hall's testimony on this question of management control and that, as I recall, you said you agreed with it so far as your circumstances were concerned; am I correct about that? A. Yes, you are correct.

Q. I was curious as to just what your understanding of this concept is, just from your standpoint, what is this management control we have been hearing about? A. Management control would be employing the C&S style and the C&S philosophy of

banking. It would be doing what I have been raised to do since I started working for the C&S Bank, that is, trying to take the positive approach, trying to say yes, rather than no to loan requests, and this kind of thing.

Q. Is that about it? A. This is—well, no, I wouldn't say that was it. I would say it just involves a very, very broad-type **[800]** thing really.

Q. Yes. Well, I was curious as to where the control element comes into that situation. A. Well, you see, the C&S National Bank and I, we agree. We agree because I have been employed there and I understand why they do things the way they do. And so it is a voluntary thing; I just agree with what we do and what they recommend.

Q. Well, when you agree with someone, someone else as to what someone else wants to do, does that necessarily mean that you are controlled? Do you always think of it in that way? A. Well, it just—in other words, I have asked for their help. I have asked for them to provide the tools to make that bank successful, and I don't see how I could be anything but receptive to what they recommended.

Q. Excuse me, Your Honor.

Mr. Berry, I think you indicated that you might have sent a copy of that ad to your customers, this, you know, thing here. A. Yes.

Q. Can you recall, if you have a recollection at all of having sent it, would that have been shortly after the suit was filed in this case? That would have been back in November last year? **[801]** A. I think so.

Q. Perhaps you would take another look at this letter, please. This is the Bobby Morris letter again. And you will notice on the second page that he notes that: "For those of you who are not familiar with the threat posed by this group of anti-trust

attorneys, I am enclosing a copy of a recent public service advertisement." A. All right, all right.

Q. Do you think the ad that the public service announcement he refers to here in that paragraph would have been this ad that we have been talking about on November 23rd? A. I think so. I am not positive, because I don't specifically remember these, but I think this would be appropriate.

Mr. Kinkaid: Thank you very much. No further questions, Your Honor.

[802] Redirect Examination

By Mr. Doyle

Q. Mr. Berry, you are presently president of C&S Bank, Milledgeville? A. Yes.

Q. Is that a correspondent associate of C&S National Bank? A. Yes.

Q. Are the services, charges, interest rates charged and paid by that bank in Milledgeville the same as the C&S South DeKalb? A. No, sir. No, sir, we have different charges in various areas.

Mr. Doyle: All right, that's all I have.

The Court: You may step down.

Mr. Doyle: Mr. Roy Holland.

Whereupon,

ROY B. HOLLAND

was called as a witness by and on behalf of the defendants, and having been first duly sworn, testified as follows:

Direct Examination

By Mr. Doyle

Q. Mr. Holland, would you state your name for the record, please, sir? A. Roy Bynum Holland, Jr.

[803] Q. What is your occupation, Mr. Holland? A. Pharmacist, owner of drug stores.

Q. Where is your drug store located? A. Two stores; one at 2003 Candler Road, one at 3290 Memorial Drive.

Q. What are the names of the drug stores? A. Holland & Knight.

Q. You are presently serving on the Board of Directors of the South DeKalb branch, is that correct, bank? A. Yes.

Q. At the time you bought your stock in the bank—you did buy stock in the bank, of course? A. Yes.

Q. And agreed to serve on the Board. Who approached you in that connection? A. Warren Berry and another officer of the bank, Tom Holmes.

Q. Was Citizens and Southern National's direction important in your decision to buy stock as a director? A. Yes.

Q. Did you expect Citizens and Southern management and direction in the bank? A. Yes.

Q. Do you rely on them now as a director? **[804]** A. Yes, I sure do.

Q. How important would you say Citizens and Southern is to the running of your bank today? A. We think it's very important. They furnish us with all kinds of materials. For ex-

ample, at our Board of Directors' meetings we have a very detailed report of all of the procedures, all the things that—transactions that have happened during the month, shows the profit and loss, and all of that. And it's really very helpful and we have been very successful in the bank. We just believe in the way Citizens and Southern operates.

Q. If the merger applications which are the subject of this litigation hadn't been filed, Mr. Holland, would your bank's past and present relationship with Citizens and Southern have continued? A. It would as far as I was concerned. I'd be very much in favor of it.

Q. Has Citizens and Southern South DeKalb Bank faced competition from other new branches from other banks in your area? A. Yes, we have several nearby.

Q. Have you helped solicit customers for C&S South DeKalb Bank? A. Yes.

Q. In doing so, do you make any reference to **[805]** Citizens and Southern? A. Yes, we do.

Q. Do you hold it out as a Citizens and Southern Bank? A. Yes, I do.

Q. Can you tell the judge and the Court how the bank has helped serve banking needs in the community where it's located? A. Well, of course, all banks are similar, but I think, the important part of our bank is the confidence that people have in it being associated with Citizens and Southern, and its being a large bank that they can offer, maybe some services that smaller banks could not.

Mr. Doyle: Thank you. He is with you.

Cross-Examination

By Mr. Stern

Q. Mr. Holland, just a couple of questions. What services do your customers need that other smaller banks can't offer? A. The primary one that comes to my mind would be large loans, larger loans than smaller banks would be able to give.

Q. Have you ever heard of a correspondent relationship? A. Yes—you mean with other banks, other than——

[806] Q. Yes. A. Yes.

Q. You have heard of that. Aren't there loans that your bank gives that are beyond the lending limit capacity of your own bank? A. Yes.

Q. And you are able to make these loans by loan participation in cooperation with Citizens and Southern National? A. Yes.

Mr. Stern: All right, no further questions.

The Court: You may step down. Call your next witness.

Mr. Hodgson: If Your Honor please, our proposed course of the trial at this point is to have such a representative of each of these banks. We don't think it will take any more time of the Court than has been indicated by this pair. If the Court feels that this is entirely cumulative evidence, of course, we think it may be also.

We do not want to prejudice the course of the trial by failing to make these men available. There are slight differences among each of them. We are prepared to go on.

The Court: I am certainly prepared **[807]** to accept what has been testified to by Mr. Berry and Mr. Holland with respect to South DeKalb as completely typical of the others. If the Government counsel thinks that would be an improper conclusion, then we can go into it further.

Mr. Kinkaid: The only problem I can foresee, Your Honor, with this would be what is the time frame involved in this similarity. If we are saying that as of today all the other associate banks are pretty much the same as Sandy Springs, is one thing. It's another thing to indicate that other of the banks that have been around for ten, twelve years are also same and have been so for their entire history.

The Court: Do you know any difference, suspect any difference?

Mr. Kinkaid: Yes, I think there were some differences that are already in the record.

The Court: We sure don't need them again.

Mr. Kinkaid: True, as long as the differences are there.

The Court: With respect to the past pair of witnesses, it seems to me that there is generalized testimony which pretty well can stand as typical. If there are specialized differences the record **[808]** shows, certainly we can consider them.

Mr. Hodgson, are you happy with that?

Mr. Hodgson: Is the Government satisfied with this?

May we consult just two minutes, Your Honor?

We have one officer we would like to call because of some specific differences in regard to dates.

The Court: All right, you may do so.

Mr. Doyle: What we propose to do, if the Court please, is address the specific issues raised by Mr. Kinkaid as to the organization of Citizens and Southern Chamblee Bank. I call Mr. Hubert Harris.

Whereupon,

HUBERT HARRIS

was called as a witness by and on behalf of the defendants, and having first been duly sworn, testified as follows:

Direct Examination

By Mr. Doyle

Q. Would you state your name for the record, please, sir? A. Hubert Harris.

Q. What is your present occupation, Mr. Harris? A. I'm retired.

[809] Q. From what are you retired, sir? A. Citizens and Southern Bank of Chamblee.

Q. How long were you employed at C&S Bank of Chamblee? A. Twelve years and four months.

Q. In what capacity, sir? A. President.

Q. Were you there when it opened? A. Yes.

Q. What has been your employment history before that time? A. Since 1926, I have worked for Citizens and Southern National Bank.

Q. Would you outline what you have done, tell us what you have done for Citizens and Southern National Bank immediately before you went to C&S Chamblee? A. I came from Athens to Atlanta. After several moves, I was in charge of the Office at Marietta Street, Northwest office, and then the office at 140 Peachtree Street. From there, I went to Chamblee.

Q. All right, sir. Who first elected you or approached you to be president of Citizens and Southern National Bank of Chamblee when it opened? A. It was Chamblee National.

Q. Chamblee National Bank? **[810]** A. George McKinnon.

Q. He was then employed by whom? A. By Citizens and Southern National Bank.

Q. Were you encouraged by Mr. McKinnon to purchase stock in your new bank? A. Yes.

Q. Did you? A. Yes.

Q. Was your purchase financed? A. Yes, with C&S National.

Q. Were the members of the public aware of the Citizens and Southern sponsorship and support of your bank when it was organized? A. Yes, they were.

Q. Did you solicit sale of stock of the bank? A. Yes.

Q. Could you tell us how you did that? A. Well, this is a new community. Of course, in selling the stock it gave me an opportunity also to meet many of the individuals there. I stressed the fact that we would have the support of Citizens and Southern National Bank in all that we did there.

Q. Did you solicit the new customers for the bank when it opened? A. Yes, I used the same principle, same process.

[811] Q. Did you mention or emphasize the fact of Citizens and Southern's relationship? A. Yes, I did.

Q. I show you a bunch of brochures that come from Defendants' Exhibit 314, and ask you if you are familiar generally with these kinds of things. A. Yes, I'm familiar with them.

Q. Those are brochures that deal with various services offered by Citizens and Southern Bank? A. That's correct.

Q. Did you display similar kinds of brochures in your bank when it was first organized in Chamblee, the bank at Chamblee? A. Yes, sir, those that were available at that time, yes, sir.

Q. By that, do you mean there may have been some difference between what was available then and now? A. What was available then we displayed them.

[812] Mr. Doyle: No further questions.

Cross-Examination

By Mr. Kinkaid

Q. Mr. Harris, on the question of public awareness of your association with C&S back in what was it, 1960, when the bank opened? A. Yes.

Q. Can you recall whether or not your bank ran any newspaper ads or ran any kind of advertising campaigns which specifically referred to any association that you had at that time with C&S? A. I don't think so. In some of the ads we had a little sentence at the bottom, "Correspondent associate of the Citizens & Southern National Bank."

Q. And so far as you can recall, that was the relationship that was being made known to the public at Chamblee? A. Yes, sir, but in all that we did, we made it very clear, our relationship; for example, our stock was over subscribed and many of our customers wanted stock, so when we could not supply stock of Chamblee National, we suggested that they buy C&S National, and many of them did. But we made it very clear, our relationship from the very beginning.

Q. What was that relationship at the beginning **[813]** that you told these people about? A. That we would have the support and guidance of the Citizens & Southern National Bank. We said we are a small bank, but we have every service that the big bank has, and we can give it to you here.

Q. Did you tell these local people in Chamblee that C&S National would be running your bank? A. I told them they would be behind us.

Mr. Kinkaid: Excuse me, Your Honor.
No further questions, Your Honor.

The Court: All right. You may step down.

Mr. Hodgson: Judge, in view of the fact that we had planned to have approximately twelve witnesses on and did not know—

did not predict this course of trial, we do not have any witnesses currently on call and present in the courtroom. As a consequence, I would say we are ahead of schedule, you might say.

The Court: All right. How soon can you have a witness in the courtroom?

Mr. Hodgson: After lunch. Is that satisfactory with Your Honor?

The Court: Yes, sir.

[814] Mr Hodgson: Some of them—we are through, for the most part, with our own people, you see.

The Court: You can have them about 1:30?

Mr. Hodgson: Yes, sir.

The Court All right. We will be in recess until 1:30.

(Whereupon a recess was had from 11:00 o'clock, a.m. until 1:30 o'clock, p.m.)

[815] Afternoon Session
1:30 P. M.

Mr. Hodgson: Mr. Beasley.

Whereupon,

LEWIS C. BEASLEY

was called as a witness by and on behalf of the defendants, after having first been duly sworn, testified as follows:

Direct Examination

By Mr. Hodgson

Q. State your name for the reporter, please, sir. A. Lewis C. Beasley.

Q. What is your job, Mr. Beasley? A. I'm regional director of Federal Deposit Insurance Corporation.

Q. Here in Atlanta? A. Yes.

Q. What area does that cover? A. Georgia, Alabama and Florida.

Q. How long have you been in that position? A. Since April, 1967.

Q. Where were you before then? A. St. Louis, Missouri.

Q. With the Federal Deposit Insurance Corporation? A. Yes.

[816] Q. What is the function of your office? A. Under the guidance of the director of the preparation division of bank supervision, I administer the bank supervisory functions of the corporation in the Atlanta region. This involves guidance of the examination program for state non-member insured banks, the administration of statutory investigation work that would cover merger applications, applications for deposit insurance information, uninsured banks or for proposed banks that are to be members of the Federal Reserve System, branch applications, any other statutory type of applications, before the FDIC for decision.

Q. Broadly, would you describe to the Court what you do with respect to examination of banks within your supervision? **[817]** A. Well, I have a staff; they examine the banks for safety and soundness, conformity to law, adequate capital management. They provide reports which flow through my office, which I review or have reviewed. I then see them before I forward them to Washington, with a recommendation for any action I think the corporation should take.

Q. Do these systematic contacts through examinations and treatment of application of various sorts lead you then into direct contact with officials of banks in your region? A. Yes.

Q. What sorts of contacts do you have with those individ-

uals? A. My contacts would come largely when we have problems with banks, either through correspondence or conferences in dealing with applications, when we, either through correspondence or through direct discussion, deal with the subject matter of the application.

Q. Do bankers or not frequently consult you with respect to actions they propose taking before they make final applications? A. Yes.

Q. Have you been in such contact with officers or officials of the Citizens & Southern National Bank [818] and Holding Company from time to time in this regard? A. Yes.

Q. Mr. Hall, the president of the Citizens & Southern Holding Company has testified that he has kept in close touch with the various regulatory agencies concerning the activties of that holding company from time to time. Would you consider yourself included in that group? A. Yes.

Q. What sorts of contacts does Mr. Hall and his people—do Mr. Hall and his people have with you from tine to time? What form do these contacts take? A. Well, either by telephone call or a visit, they discuss applications they contemplate filing, have filed, practices or policies of the banks under their guidance.

Q. In your capacity as regional director for the Atanta region of Federal Deposit Insurance Corporation, did you consider the application for Federal Deposit Insurance of the Citizens & Southern Bank of South DeKalb at the time it was in organization? A. Yes.

Q. Did you understand that Mr. Warren Bery was proposed to be the president of that bank once it was organized, that he had been an officer and employee of [819] the Citizens & Southern National Bank, and at the time the application was being considered by your office, he was a manager of a branch of the Citizens & Southern National Bank? A. Yes.

Q. Did you consider the application for that charter as being one sponsored by the Citizens & Southern National Bank? A. Yes.

Q. Did you expect that the Citizens & Southern South DeKalb Bank, if the charter were organized, would have the general policies of the C&S, its standards, the support of its normal audit procedures, and that the Citizens & Southern National Bank and Holding Company were behind the proposed bank and would supervise it?

Mr. Kinkaid: Excuse me. Your Honor, I would much prefer to hear this testimony in Mr. Beasley's own words. It seems to me like an awfully leading question on a very important point.

The Court: Would you break it down, please, sir.

Mr. Hodgson: All right, sir; yes, sir. **[820]** With respect to this application and your expectations concerning support of the Citizens and Southern National Bank Holding Company, what did you eypect that this sponsorship and support would consist of? A. I expected particularly that audit procedures and general policy guidelines woud be furnished by Citizens and Southern.

Q. What about with respect to management and management continuity? A. Yes, I think that generally management had come, it did in the Citizens and Southern South DeKalb case, from the Citizens and Southern National staff.

Q. Considering applications which were in fact made for branches submitted by non-C&S Banks in DeKalb-Fulton areas and market areas where C&S five percent banks were also in existence, did you consider the support that the Citizens and Southern Banks received from C&S as making them better able to receive competition than if they were independent unit banks? A. Yes.

Q. Did you pass on the application in any degree of Citizens and Southern of East Point to establish a North Springs branch

at Roswell and Dalrymple Road? A. My office was required to make a recommendation.

Q. In passing on that and making your **[821]** recommendation, did you consider that this branch application was a part of an overall plan which also included the application contemporaneously submitted by East Point to merge with C&S Sandy Springs and C&S North Fulton? A. Yes, sir.

Mr. Hodgson: He is your witness, Mr. Kinkaid.

Cross-Examination

By Mr. Kinkaid

Q. Mr. Beasley, I wanted to get a couple of things straight, really, about what we might call a chain of command between your office and the FDIC office in Washington. If I understood your direct testimony correctly, when you entered into the organization of the South DeKalb or even the branch for East Point in North Springs, am I correct in understanding that your office was simply conducting an investigation and making a recommendation to the folks at Washington? A. Yes. I have a field examiner conduct a field investigation then I have to make a recommendation to the Washington office.

Q. In other words, you yourself do not exercise the final approval or authority for the FDIC? A. That's correct.

Q. I think you also, in generally describing the **[822]** functions of your office, noted that basically it shall function to see to it that various banking activities, particularly those of nonmember banks are handled in conformity with the law; am I correct in recollecting your testimony in that regard? A. Yes.

Q. Now, the laws you were referring to were various banking statutes; am I right? A. Basically Federal banking statutes.

Q. Right. Do the laws—does this question of conformity to the law, do you have anything at all to do with determining

whether the actions of the bank under your jurisdiction conform with the anti-trust laws in any way? A. Well, I'm not an attorney so I would not render opinions as such.

Q. No, what I was getting at, of course, you are head of the local FDIC office and you were describing the functions that you perform, and you did say that one of the functions that you perform was determining whether various banking activities were conducted in conformity with the laws. I would think it would come within your own knowledge as to what laws you have in mind. A. I have generally banking laws in mind.

Q. Do you have the anti-trust laws in mind? **[823]** A. I did not have anti-trust laws in mind.

Q. As a matter of fact, were any of the matters that Mr. Hodgson asked you about, were the anti-trust laws considered in any respect within your own investigation or recommendation? A. On the recommendations on mergers, the effect of the transaction on competition?

Q. Right. A. It's considered.

Q. Yes, of course, I was thinking more in terms of the application for the new bank at South DeKalb. A. No.

Mr. Kinkaid: We have no further questions.

The Court: You may step down.

Mr. Hodgson: Thank you, Mr. Beasley. You may be excused.

You have no reason for us to hold this witness, have you?

Mr. Kinkaid: No.

[824] Mr. Hodgson: Mr. Ream.

JOSEPH M. REAM,

being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Hodgson

Q. State your full name for the reporter, please, sir. A. Joseph M. Ream.

Q. What is your position, Mr. Ream? A. Regional administrator of national banks, Sixth National Bank Region, Atlanta.

Q. Under what national organization do you function? A. Controller of the Currency.

Q. How long have you had this position? A. September 1st, 1966.

Q. Would you describe to the Court the function of the office of regional administrator? A. It is the primary field supervision of national banks within the region, which includes investigation of branches, charters, mergers, trust powers and other banking functions. This also includes the field staff of examination of the bank itself, the preparation of the reports, initial supervision of the **[825]** banks and forwarding the reports to Washington.

Q. Does this or not place you into systematic and regular contacts with officials of banks within your region? A. It does.

Q. What is the scope of your region, Mr. Ream? A. South Carolina, Georgia and Florida.

Q. As a result of these contacts, do you have other contacts with officers of national banks in your region? A. I do.

Q. What form do they take? A. In the event of severe problems in a national bank, I normally meet with the board of directors and the officers of the bank. Many times we will

have public hearings on charters and branches. I also meet with them informally, at gatherings, such as the BGA, FBA, South Carolina Bankers, and normal supervisor-supervisory relationship.

Q. Is your office consulted from time to time by officials of national banks in your region as to actions they propose taking? A. Normally.

Q. This normally happens? A. Normally, yes. Especially on charters, branches, **[826]** building programs, capital programs, this sort of thing.

Q. Was the Citizens & Southern National Bank and Holding Company an exception to this, or did they consult you regularly in that regard? A. They consulted me.

Q. They did? A. They do.

Q. Which officers do? A. Many times, Joe Hall, Gordon Trulock, Howard Starks, Bill Green, many of the officers of C&S.

Q. In the scope of this, did the fact that these five-percent relationships, which I will describe as relationships between the National Bank and Holding Company on the one hand, and state banking companies in which it held—they held a five-percent interest on the other, and with which they had various management relationships, were those discussions with you and did they come to your attention? A. Yes.

Q. In what form? A. Well, the Holding Company is a subsidiary of the National Bank, and we have the right of examination of all subsidiaries. And these five-percent holdings would appear as assets in the Holding Company's books, **[827]** so that they are available to us as we check the Holding Company's books.

Q. With regard to the application for charter of the Citizens & Southern Park National Bank, a national association, did

you have any expectations as to the extent of the C&S relationship that would exist if the charter were granted? A. I knew that C&S would provide management policy, audits, legal service, and various other factors as though it were an important part of their own organization, yes.

Q. Did you consider this, the furnishing of these services and the giving of this relationship, as a favorable factor in considering the charter application? A. I did not consider the charter application.

Q. Did you make any sort of recommendation with respect to it? A. This, I believe was done before I arrived in Atlanta. I think that was done in the spring of '66 or fall of '65. I did not arrive until September.

Q. So far as you know of that relationship, would you have considered it a favorable aspect or an unfavorable one?

Mr. Kinkaid: Your Honor, that is **[828]** pretty speculative, and the man was not here, as he has plainly stated and has nothing to do with it.

Mr. Hodgson: I think he is speaking as an expert, Your Honor, as to whether he would or not.

The Court: Go ahead, you may answer.

A. Repeat the question, please.

Q. Would you have considered those relationships as being a favorable factor or an unfavorable factor, yourself, standing alone? A. The fact that there is continuity of management, which is a problem in many banking institutions, yes, that would be a favorable factor. The feature of participation of loans to get the bank onto an immediate profitability basis, as we have in Florida with our holding companies there, yes, there is a definite advantage to affiliation or an affiliation.

Q. In considering an application by a non-C&S bank in Atlanta and Fulton County after countywide branch banking

became possible, such as by the National Bank of Georgia or First National Bank, to establish a branch in that market area, in the market area of a C&S five percenter, would you consider that the five percenter was more able to withstand competition **[829]** of those new branches than if it had been an independent unit bank? A. Yes, I do.

Q. Why? A. Because the C&S Bank actively competes with these organizations, and I feel that with their association with the five percenters, they are going to use the same competitive aspects as they would in the city, if it were a branch.

Q. Except for the legal, separate structure of the banks, do you consider these five percenters to be C&S Banks? A. No.

Q. Except for the legal structure. A. Well, except for the legal structure, they are associated, affiliated, but they do have separate boards of directors and are supervised independently of any parent organization while they are under the aegis of the C&S National; yes, I must say that they are independent organizations.

Mr. Hodgson: All right, sir.

Mr. Kinkaid: Your Honor, we have no questions.

The Court: You may step down.

Mr. Hodgson: Thank you, Mr. Ream.

[830] Mr. Doyle: I call Mr. Henry Collinsworth.

Whereupon,

HENRY T. COLLINSWORTH, JR.

was called as a witness by and on behalf of the defendants, and having first been duly sworn, testified as follows:

Direct Examination

By Mr. Doyle

Q. State your name for the record. A. Henry T. Collinsworth, Jr.

Q. Where are you employed? A. C&S Bank.

Q. In what capacity? A. Executive vice president, corporate banking.

Q. How long have you been with C&S? A. Twenty years.

Q. Could you outline generally the areas of banking which you have been employed in? A. Operations a brief period of time, approximately ten years in consumer lending and consumer banking. For the past ten years, in corporate banking.

Q. Could you outline briefly what the business of the corporate banking area is? A. It's our business to handle the corporate customers of the bank, those business customers as opposed to individual customers of the bank including both **[831]** national companies, who are doing business with us, those local companies who do business at our main office or downtown office as opposed to our branches and small businesses, in your small business lending area.

Q. Mr. Collinsworth, you have before you a copy of Defendants' Exhibit 84-85; do you not? A. Yes, sir.

Q. Mr. Collinsworth, have you had occasion in connection with your testimony here today to analyze your corporate business coming under your department? A. Yes, sir.

Q. Have you attempted to determine the dollar value of demand deposits of Citizens and Southern National Bank and its

affiliates which are in excess of $100,000 which originates from companies headquartered outside of the State of Georgia? A. Yes, I have.

Q. That is that first figure on this Exhibit 84-85; correct? A. Yes, sir, $138,962,000.

Q. The second figure there, State of Georgia, is the same thing except that it's outside of the Atlanta area? A. That's correct; it's $23,524,000.

Q. And by Atlanta area, we are talking mostly **[832]** about metropolitan? A. Metropolitan Atlanta area.

Q. Then, that third figure? A. Is the out-of-state accounts from ten to a hundred thousand dollars, that is those accounts head-quartered outside the State of Georgia which is $19,740,-000.

Q. All right. The correspondent bank accounts that are reported there, those are as they are characterized? A. They are correspondent bank accounts from banks in Georgia, Alabama, Florida, and other parts of the southeast.

Q. Okay. A. Which total $54,749,000.

Q. In that Division 1, Georgia? A. Yes.

Q. Is that within or without Atlanta metropolitan area? A. It's out from the Atlanta metropolitan area.

Q. Okay. Now, with affiliates you did essentially the same thing? A. Yes, sir, we took those accounts from Georgia headquartered companies, those companies headquartered outside of the Atlanta area, yet bank at Emory, East Point and DeKalb amount to $8,403,600.

[833] Q. And then with regards to correspondent associate banks, you had occasion to run that analysis as reported there? A. That's right. Those totalled, in the case of Georgia headquarted companies, $6,685,400.

Q. The correspondent associate banks there, are those the ones who are defendants in this action? A. Yes, sir.

Q. Now, you talk about an out-of-state company, what is included within that? A. These are companies whose corporate headquarters are located outside the State limits of Georgia, basically those companies where the financial decisions are made at corporate headquarters.

Q. And by financial decisions, what do you include within that so far as this is concerned? A. Placement of these bank accounts, judgment as to which banks will receive these accounts.

Q. Are there included, say, in that first figure, $138,000,000 figure, are there included in there any accounts of companies which have no brick or mortar physically located in Atlanta? A. Yes, there are.

Q. Give us some examples of what and why, how that comes to be. **[834]** A. For instance, there is an account of Warner Lambert Pharmaceuticals, a New Jersey company, a lock box at our Atlanta office, Atlanta main office, C&S National Bank for collection of its accounts receivables. These accounts originate throughout the southeast. The account is billed by Warner Lambert. The check comes from the lock box or post office box under our control and is deposited in the account at C&S National Bank. The company gains the benefit of faster collection time on these items through our check collection procedures. Again, faster mail time into Atlanta as opposed to New Jersey.

Q. What are the effects with regards to a company getting its money? A. A company gets its money faster, gets expendible funds faster.

Q. Can you give us another example where a company has no brick or mortar in Atlanta, you know, physical location? A. Yes, we have an account which has just come on from the International Telephone & Telegraph Company, Continental

Baking Division, where bakeries throughout the southeast send deposits into concentration accounts in our bank. These are internal funds from these bakeries. They are collected in our bank here and transmitted onto the company's headquarters in New York. The company again **[835]** gains collection of funds. In addition, it has control of funds from the time collected into the banks in the areas throughout the south.

Q. All right. Now give us the range of banks that you compete against for this kind of business. A. Well, the larger the dollar deposit, the more the competition from outside our area. These competitors in New York, money centers, such as Chicago, Los Angeles, they are in North Carolina, they are in other parts of the southeast.

Q. All right, sir. Now, all of the figures that are reported in out-of-state, State of Georgia, $100,000 and more, all of them are not related to companies that have no physical location? A. No, sir, they are not.

Q. And now, do out-of-state banks compete for the same national accounts sort of business of Atlanta-based businesses? A. Yes, they do. We have a number of accounts here in our bank in Atlanta which do business with banks around the country.

Q. Are you aware of the extent of that? A. Yes. For instance, I'm aware of certain instances, for instance, New York's banks, I believe nine in number, tell us they have $45,000,000 on deposit in **[836]** Atlanta-based companies. Chicago banks tell us they have approximately $9,000,000 on deposit from Atlanta-based companies.

Q. Now, you have reported here and on this exhibit deposits at correspondent associates from the companies categorized. Who solicited that business? A. In some measure, the Citizens and Southern National Bank solicited the business or assisted in its solicitation through account offices in corporate banking areas.

Q. Other instances? A. The business was solicited in some cases by those banks themselves, but the principal assistance in putting together the relationship, I would say, came in joint efforts between those banks and our corporate banking offices.

Q. Can you give us any example of how this would come to be with regard to the specifics? A. Yes, I can give you one particular account, Marathon Oil Company which has an account at the C&S National Bank, main office, in addition has $3 million, or we, C&S National Bank, has a $3 million dollar participation in revolving credits of this company, in that company's total credit. That company, in addition, has a lock box relationship with us and deposit relationship at **[837]** the Citizens and Southern Park National Bank. In this particular case, the company's principal balances are at Citizens and Southern Park National Bank, amounted to some $500,000.

Q. Does the handling of this lock box business of Marathon Oil, for instance, relate at all to Citizens and Southern's system? A. The handling of the lock box done at the main office in Atlanta, that is the negotiations for a lock box, the call on the company related to it was done by the Citizens and Southern National Bank.

Mr. Doyle: That's all.

Mr. Sims: If we could have just a minute, Your Honor.

Cross-examination

By Mr. Sims

Q. Mr. Collinsworth, looking at this chart, Exhibit 84-85, the first number on there is out-of-state accounts, $100,000, and over a total of $138 million. Do you know how many accounts that represents? **[838]** A. No, sir, I don't. We have back-up information; I don't have it with me. It would be in excess of a hundred; I don't know.

Q. Would it be in excess of two hundred? A. I just couldn't answer that. It would be an approximation, and I just don't have any——

Q. Would it be less than a thousand? A. Yes, sir, I would think it might be.

Q. Do you happen to know how many accounts are represented by any of these other numbers on this chart? A. Yes, sir. Again, these are approximations. I don't have exact figures.

Q. Approximations are fine. A. But I don't—in the case of the next two items, in the case of the correspondent banks, we have some 700 correspondent bank accounts in total. Those represented in the first three, I would say, would—first three categories would represent the largest majority of those. I don't have the specific number.

Q. How about the figures for the affiliates? Do you have any idea of how many accounts those involve? A. No, sir, I don't in the case, no, sir, I just don't. I don't have the specific numbers.

Q. And for the correspondent associates? **[839]** A. No, sir.

Q. Do you know how many total accounts Citizens & Southern National Bank has? A. How many total bank accounts that Citizens & Southern National Bank has?

Q. Total bank accounts. A. Well, no, sir. I would guess the figure is in excess of 100,000, but it is a guess. You are talking about total bank accounts?

Q. Total bank accounts.

You mentioned that some of these out-of-state accounts were, I think you used Warner Lambert as an example? A. Yes, sir.

Q. People who don't have any brick and mortar in the state of Georgia? A. Right.

Q. How many others are there like Warner Lambert in that? A. There are a number. Again, I don't have a specific number, but there are——

Q. As a percentage of the total number, what would you estimate? A. The percentage of the total number is relatively small.

[840] Q. All right. Mr. Collinsworth, how long have you been with C&S National Bank? A. Twenty years.

Q. Have you always been in the corporate accounts department A. No, sir. As I said, I was in consumer lending and consumer banking for about ten years.

Q. What determines the bank's lending ability? A. What determines a bank's lending ability? I think that bank's size; I think its capability of its lending officers; I think the market in which it operates.

Q. When you say size, do you mean the amount of deposits that it has on hand? A. No, sir, I mean the lending capacity of that bank.

Q. Would you distinguish those two things, the amount of deposits versus the lending capacity? A. Well, there are legal limits applied to banks related to capital and surplus. There are. I think deposits relates somewhat to capacity, in that they have funds which they can lend or over which they cannot,

Q. Let's try to—let me try to get a little clearer on this last point. The bank has a legal lending limit? A. Yes, sir.

[841] Q. Which is determined by what? A. Its capital surplus and undivided profit.

Q. What relation does the total deposits of a bank have with those figures? A. Well, obviously, the bank's ability to gather deposits to the extent that capital and surplus relate to those deposits. A bank is required to maintain certain capital requirements in relation to its deposit size. Obviously, the larger

the deposit, the larger the capital growth of the bank, the more money it can lend.

Q. So, therefore, the larger the deposits, indirectly at least, the larger the lending ability? A. The larger the lending capability, to the point that it reaches a legal capacity.

Q. Right. When your bank is faced with loan demands in a particular area, let's use DeKalb County as an example, is its ability to meet those demands limited by the amount of deposits that it draws from DeKalb County residents? A. Let me give you this example. I think, and, again taking the case of Marathon Oil, Marathon Oil's request for credit at a time when money was awfully tight, the capacity of the C&S National Bank enabled us to meet that need, even though the main deposit of that company was at the C&S Park National Bank, **[842]** simply because we look on these banks as one and the same.

Q. Okay. Well, let me rephrase the question, then, because I don't think we are on the same point.

To the extent that you have loan demand in DeKalb County, as an example—— A. Yes.

Q. ——is your ability to meet that loan demand determined solely by the amount of deposits which you receive from DeKalb County? A. No, sir, it is related to the amount of deposits that are in the bank as a whole.

Mr. Sims: I have no further questions.

Mr. Doyle: Call Mr. Gordon Trulock.

The Court: Step down. Thank you.

GORDON B. TRULOCK, JR.,
being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Doyle

Q. State your name for the record, please, sir. A. Gordon B. Trulock, Jr.

Q. By whom are you employed, Mr. Trulock? A. The Citizens & Southern National Bank.

Q. In what capacity? **[843]** A. I am now assistant to the president.

Q. How long have you been with the bank? A. Twenty-five years.

Q. In broad brush, would you outline your career with the bank? A. Basically, I have been in the credit and credit-related areas for the entire twenty-five years. Just prior to my becoming assistant to the president in May of this year, I had been senior vice-president for credit for the C&S system. I had been in that capacity for approximately four to five years.

Q. What part of banking is credit? A. Well, credit, basically, is the lending of money, the making of loans. In my case, primarily commercial loans to businesses or time loans to individuals, and I say commercial and time loans to distinguish from the consumer loan area, with which I haven't had much involvement.

Q. Can you tell us what ingredients you consider, a banker considers, in making a loan or handling a loan application? A. What ingredients?

Q. Uh-huh, what goes into it? A. Well, basically, there are five ingredients that any lender of money might consider in extending **[844]** credit. I think, first, would be the cost of money. I think second would be the cost of servicing. Third

might be the risk factor that is involved in lending money. Four might be the profit factor that we would expect off of a typical loan transaction. And, finally, we have to consider the competitive environment in which we operate.

Q. All right, sir. Let's go back and treat each of those briefly. A. Yes, sir.

Q. With regard to the cost of money. A. Yes, sir.

Q. What do you consider—how does that get determined? A. Well, as I look at it, a bank, such as the C&S, makes many different types of loans, but, basically, we are lending from a central pool of money that arises from demand deposits, time deposits of various kinds, as well as the short-term money market instruments. For example, federal funds. It is difficult, I think, or well-nigh impossible to say that a given loan is funded entirely by either time or demand deposits, although I think to a certain extent we do consider this.

Q. What factors affect the cost of money? **[845]** A. Pardon?

Q. What factors go into the cost of money that you have to pay? A. Well, in the case of time deposits, the rate that is paid; also, I think to be included is the cost of servicing, and, that is, the cost of accumulating, of soliciting of loans; the inherent cost of maintaining the records or filing the necessary reports that are attendant with various types of deposit transactions.

Q. Would you take for me a couple of examples of loans where the cost of servicing would vary, let's say, one at one end and one at the other. A. Yes. As a for example, and illustrating a situation where the cost of loan servicing might be minimal would be perhaps the lending of money to a national account, such as Mr. Collinsworth described. For example, if General Motors were to send a note into the C&S Bank, I would say that the cost of servicing that particular type—that particular loan would be relatively small. On the other hand, if a local company, because of its financial strength, et cetera,

is borrowing against accounts receivable, we might consider that this is the type of loan where the proper control and dominion, supervision, if you will, of the collateral requires a great deal more time and expense **[846]** on our part. And, in a case like that, we would say that the cost of servicing is fairly significant.

Q. You mention inherent risk factor. I suppose that is obvious, but would you show us by brief examples the way those might differ? A. Well, here again, we get into a broad range of topics. But, specifically, I look at risk as that probability of the bank being repaid its principal plus interest that is involved in any loan.

[847] Q. What would you consider a very low risk kind of loan as an example? A. Well, the low risk type loan might again be a loan to a large national company of impeccable credit standing and strength for the size of the loan as related to the company's total assets, where the purpose of the loan is relatively short term in nature and we can foresee or anticipate a fairly rapid pay-back. We might say that the risk is minimal. On the other hand, where we are lending to a small business, for example, that is just getting underway where the financial strength is perhaps marginal, and perhaps the future of the business really depends in part on their earning a profit fairly soon after they open the doors, you would say that the risk is significant.

Q. All right, sir. You mentioned the profit factor and competitive factor. A. Yes.

Q. Tell me how you go about putting those into a mix. A. Well, obviously, we like to think that the dollars we lend, the purpose of our lending activity is such that a typical borrower, customer can use the dollars we lend at a profit to himself, and the customer having then earned a profit, we think that we are entitled to be **[848]** compensated for our time and effort, and so we typically attempt to plug in a profit factor.

Q. And the competitive effect? A. Well, we don't lend money in a vacuum. By that, I mean that to say, the customer has other choices in terms of lending institutions who are willing to make credit available to him. And while we might feel that a credit based on the standard that we use should carry a rate of interest of, we'll say, eight percent, we have to carefully review our transmittal process or calculations to make sure that this is right because we know that if we are wrong, and that we quote this customer a rate that is not in keeping with the type of transaction, that he can very likely go across the street and borrow the money at a cheaper rate.

Q. Well, in a given situation, with a given customer, Mr. Trulock, how do you put all these factors together? A. Well, I like to think, in fact, I know that, Mr. Doyle, having been involved in this for a number of years, that the lending of money is an art and not a science. By that, I mean, simply this, that we know that the ingredients that go into the making up of the credit decision for any given credit place different emphasis on different ingredients. And it finally gets down to the ability of **[849]** the lending officers to evaluate these, to determine the validity of the loan request in terms of its value to the customer and to the community, to this about all of these factors, that these five factors, at least, that I have outlined, and to arrive at a decision as to a rate that is proper. And I'm sure, because I have seen it happen, that you can take the very small loan requests, you can ask five lending officers in the Citizens and Southern Bank to evaluate it, and to list the strong points in the credit and to list the weak points in the credit, and finally come up with a rate of interest. I dare say out of those five people you would have at least four, maybe five different conclusions. Could have, you may not have.

Q. Now, your office and you have, on occasion sent out various kinds of general quoted rates? A. Yes, sir.

Q. Can you tell me how those fit into this picture that you

are telling us about? A. Basically, and I assume you're referring to rate charts——

Q. Yes, sir, that sort of thing. A. Well, we attempt to do this primarily as a service to the lending offices to the various areas of the banks knowing full well that there is nothing in the way of an ethical secret about this, that they could obtain **[850]** the same information about this if they had the time and inclination to do it, and really, it's in the final analyses, Mr. Doyle, a composite of our reaction to the national money market to supply and demand for money, if you will, to our evaluation of the propriety of the bank making a specific type of loan under existing economic conditions.

Q. You say that if they had an inclination to get it, where could they go get it? A. Well, it's not a question of really where they would go get it. It's a question of really trying to digest the voluminous information that is available. For example, the Federal Reserve Bank publishes economic information that most businessmen have available. The great majority of businesses belong to various trade associations, which, as a service to their members, publish economic trends or information that is available across the board.

By the same token, the Atlanta press frequently comments on changes in rates, the fact that the Federal Reserve Board perhaps has changed to some degree its posture and is either making money more readily available or conversely, is attempting to restrict the money supply.

Q. In Citizens and Southern Bank, who makes the decision as to whether or not to commit to make a loan? A. The lending officer.

[851] Q. Does he have to go to a committee to get approval? A. Typically speaking, in the Citizens and Southern Bank the lending officer has the authority and he will usually make the loan decision and so tell the customer. Now, we do review the loans after the fact. There may be some instances when because of the

nature and the structure of a credit that a lending officer might come and consult with myself or with some other officer in the bank, attempting to get our ideas as to how a loan should be structured. And if he asks for it, we attempt to give it. At the same time, it's his decision. He has to assume the final responsibility for having made the loan. If the loan goes bad and is charged off, I can assure you it's his bad loan and not mine. And on that basis, we emphasize we are glad to give you all the assistance that you want and need, but as a lending officer of this bank, you are expected to assume that final responsibility of saying yes or no.

Q. Now, you mentioned after the fact credit review. You have heard earlier testimony about the credit review meetings, credit committees? A. Yes, sir.

Q. You heard the question, I think, that was put to Mr. Handley, as to whether or not credit review has a **[852]** stabilizing effect on loan rates. Tell us about credit review, what it does. A. Well, first of all, I don't think that it has a stabilizing effect on loan rates for the simple reason that review is primarily after the fact. It comes after the loan has been committed, after the customer has been told, "Yes, we will make the loan." After the rate has been quoted.

Q. Now, what is the purpose—what do you do there? A. Well, the primary purpose of credit review, one is to maintain some feel of the continuing quality and liquidity, if you please, of the loan portfolio.

It is used to a very large degree as a training tool to assist in the development of younger lending officers. In other words, this is a forum whereby we can make use of a living example, if you will, we can discuss a particular credit as it relates to C&S policy and philosophy.

Q. Now, would you liken it to the case method of instruction? A. Indeed I would.

Mr. Doyle: He is with you.

Mr. Stern: May we have a moment, Your Honor?

The Court: Yes.

[853] **Cross-Examination**

By Mr. Stern

Q. Just a couple of questions. You stated, if I recall your testimony right, that several people at C&S National, about five people, you said, would get together to decide what to charge under certain circumstances for a loan? A. No, sir, I don't believe I said that, Mr. Stern. If I did, I didn't mean it in that context.

Q. You said they would have different ideas, different people would have? A. I said if you presented the same situation to a group of five people in the bank, you might come up with as many as four or five different reactions and different ideas as to the proper rate that the loan might carry.

Q. Isn't it possible that somebody might, outside the bank might also have a different view? A. That's right.

Mr. Stern: Okay. Thank you.

The Court: You may step down.

Mr. Doyle: No further questions. I call Mr. Ben Cook.

[854] Whereupon,

BEN C. COOK

was called as a witness by and on behalf of the defendants, and having first been duly sworn, testified as follows:

Direct Examination

By Mr. Doyle

Q. Mr. Cook, state your name for the record, please, sir. A. Ben C. Cook.

Q. Where are you employed? A. Presently employed by Citizens and Southern Bank of Cobb County.

Q. In what capacity? A. Banking officer, manager of Marietta Square office.

Q. Could you outline for us your former history? A. I came with the bank in 1955 and worked in various areas.

Q. Which bank? A. Citizens and Southern National Bank. I worked in various areas, primarily clerical positions until 1959, while I attended school at night. I took a leave of absence from the C&S Bank to go to the Navy. I came back in 1963. I worked in the credit department, analyzing credit, credit files for approximately one year and then **[855]** since that time I have worked in the various branches throughout the C&S system.

Q. All right, sir. What branches did you work in? A. I went to the Northwest office in 1964. I went to the Fulton Industrial office, C&S Bank, 1966. Then, I went to C&S Belvedere Bank in March of '68, and in November of 1971, I went to the Citizens and Southern Bank of Cobb County.

Q. November of '71 you went to Cobb County? A. That's right.

Q. From 1968 to 1971, you were at Belvedere? A. That's right.

Q. During that period of time, the Citizens and Southern Bank of DeKalb was merged within the C&S Bank of Belvedere? A. C&S DeKalb Bank.

Q. And you were at Belvedere during that time? A. Yes.

Q. I wonder if you would tell us what difference it made as a result of that bank being merged into a branch.

Mr. Lehman: I object to the relevancy, materiality of Mr. Doyle's question. We are not dealing with a bank at hand in the case today, the defendant's banks. This merger occurred

over three [856] years ago. Apparently it has, is channeled toward the Section 7 portion and I do not see the relevancy nor the materiality as to the relationships involved before the Court as to the defendant banks, nor as to the mergers before the Court.

The Court: Overruled. You may answer.

The Witness: C&S Belvedere Bank was a unit bank. That was the only banking location of that particular bank. As such, we carried on the entire operations of the bank there. I was a cashier of the bank. As such, I was in charge of the operations department, that is the fulltime bookkeeping department. I also served in a lending function, retail lending and commercial lending. I would imagine I would have spent at that time approximately forty to forty-five percent of my time in the operations function, that is attending to the management of the operations area.

After the merger, the operations department was no longer my responsibilty and all of my time was, at that time, devoted to, waiting on customers, soliciting new business, and so on and so forth.

By Mr. Doyle

Q. What sort of effect did this merger have on [857] the ability of that bank and banking office to serve its customers? A. I think it improved it considerably from a couple of standpoints. One, it enabled those of us who were on the line in that location to devote more of our time to what we think of as front-line banking operations, that is soliciting business, opening accounts, making loans. There are some efficiencies to be gained perhaps, in combined operations, operation departments.

There was an increase in our legal limit because of combining the resources of the C&S DeKalb Bank and C&S Belvedere. There was an increase in lending limit resources which we could rely on to wait on larger corporations.

The size of C&S Belvedere Bank prior to that, we did have several corporate customers who we were banking. It was necessary to participate out a portion of their loans because of our resources. Because of our resources we were unable to handle the entire transactions. While we can make larger credits available to customers in this manner, it requires the steady approval of the credit by the participating bank also. It is a bit more time consuming, a little less flexible.

[858] Q. All right, sir. And how about with regard to deposits? Was there any difference for any of your customers in that connection? A. The only change in the deposits would be that we had an additional location at that point that they could deposit their funds and receive same-day credit. At that particular time, we were accepting deposits for other C&S banks, other C&S locations. However, those deposits were necessarily forwarded to the bank of account. Prior to that time, for example, if one of my customers at C&S Belvedere had made their deposit at the Avondale location, it would have been necessary for Avondale to have forwarded it to me, resulting in a minimum of a one-day delay in their receiving credit.

At that time, of course, if they made their deposit or any transaction that they conducted at the Avondale location, they could receive same-day credit.

Q. The significance of the same-day credit, is that important to a relatively small number of your overall customers? A. I think it is quite important to the customers because of a convenience factor. And, historically, a lot of our customers get paid and make their deposits and write out all their checks the same day. So it is **[859]** most important that we give them credit for the funds immediately. And, of course, it just afforded them an additional location on which they could receive same-day credit.

Q. Did your customers know the difference before and after? A. Not really. They came into the office there, and I was

still there; Susie or those girls, all the faces were the same; there was really no difference so far as the public banking function was concerned. There was no difference evident to the customer at all.

Cross-Examination

By Mr. Lehman

Q. Now, Mr. Cook, you mentioned that through the merger the banks were better able to serve the customers in your opinion; is that correct? A. Yes, sir.

Q. What new services did the merger bring that weren't provided to your customers before the merger? A. Not a new service per se, just an increase in legal limits and an additional location with which they could conduct their business.

Q. As to the increase in legal limits, in other words, that meant that you didn't need to engage in loan participations as much as you had before? **[860]** A. Well, as Mr. Collinsworth indicated before, we do have limits, and our legal limit that we could lend to one particular customer at that time, of course, was increased by the portion that the capital and surplus of the two combined banks were.

Q. And as to this merger, adding an additional servicing area to your customers, additional bank, branch or whatever, how many of these customers that would be serviced in this additional area would normally engage in a loan the size that would require or would have required a loan participation with C&S National? A. I don't recall. There were several. I had several loans participated out to various branches at the time. I don't recall the exact number.

Q. Would it have been a large amount, do you recall, or a relatively small amount? A. Well, of course, everything is relative. I suppose probably in—by your terms, it might have been relatively small. I don't recall how many there were. As I recall, there were seven or eight corporate customers whose

needs that we actually could not serve without the participation function. But, I don't recall the exact number; I am sorry.

Q. Do you believe that a large bank, such as C&S is better able to serve the customer than, say, **[861]** a smaller bank? A. There is no question about it, particularly in an area with an expanding economy we are in here.

Q. This would be to the average customer, what you would consider to be your average customer? A. Well, who is the average customer? We all benefit from the economy as a whole. I don't really know how to answer the question, to be honest with you. We are located in an area of expanding economy; I don't suppose I am qualified to answer this question. We are in an expanding economy, and unless industry is able to keep up with the needs of the public, the public is going to suffer in the long run; in the end it all comes down to the consumer.

Q. Would you consider industry your average customer then? A. What do you mean by average? Dollar volume, number of accounts or what?

Q. Let's say number of accounts. A. No, not in number of accounts, no, sir.

Mr. Lehman: We have no questions.

The Court: All right, you may step down.

Mr. Doyle: One moment, if Your Honor please.

[862] The Court: Oh, excuse me.

Mr. Doyle: No further questions.

The Court: Thank you.

Mr. Doyle: Call Merrill Autry, Jr.

MERRILL AUTRY, JR.,
being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Doyle

Q. State your name, please. A. Merrill Autry, Jr.

Q. Where are you employed, Mr. Autry? A. I am employed with the Citizens & Southern Emory Bank.

Q. How long have you been employed there? A. Since July of 1969.

Q. What capacity are you employed in? A. President.

Q. What is C&S Emory Bank? A. It is a—except for qualifying shares of the directors, a wholly-owned subsidiary of the Citizens & Southern Holding Company. It has four offices.

Q. All right. Before you went to C&S Emory, outline for us your employment history, please, sir. A. I have been with the bank twenty-one years. **[863]** I grew up, basically, in installment lending and term lending, spent five years in a Chicago service office. I returned, headed up corporate accounts, then moved to head up the correspondent banking department of the C&S National Bank, and then went to C&S Emory.

Q. Can you tell us, outline for us, the history of the growth of C&S Emory Bank? A. Emory started at the so-called Emory Village, right down by Emory gate, Emory University gate, in 1951. The bank remained there until 1956 or '57. It applied for and received permission to move to 1237 Clairmont Road, which was about a mile east of the Emory campus. At the time it moved, it was about a $3,000,000 bank in deposits, and today its deposits structure is about $46,000,000 or $47,000,000, total footings of 52.

Q. Was this growth a result of internal growth or acquisition? A. Purely internal growth, no acquisition.

Q. All right, sir. Tell us what factors you consider to be important in your effectiveness as a banker. A. Well, I guess it is what I basically grew up with in the National Bank, and that is the ability to do business on an individual level, to solicit and seek business, to commit your loans, to manage your people **[864]** through your guidance and direction of your board and help you receive from the National.

Q. Do your branch managers have that same sort of authority and responsibility? A. Yes, sir.

Q. Is that the same or different from what you are familiar with with regard to the branch managers of the National Bank? A. That they have—they operate the same.

Q. All right, sir. Are you familiar with the operations and the methods of operations of the presidents of the correspondent associates who are involved in this? A. Yes, sir.

Q. How do you regard them? A. They operate the same.

Q. Can you tell us whether or not there is any internal competition or rivalry among branch managers and presidents of affiliates. A. I think there is internally. We have a goalpost and we—Emory was denied access to a new trade area, a new market for it, namely, the City of Decatur on the square, so to speak. And we now have a National Bank there. We have helped that bank get some customers, but yet, at the same time, on the goalpost, **[865]** I need to show up good, too, so, internally we do have competition.

Q. How did that access to the City of Decatur get denied Emory? You said it was denied; what were you talking about? A. We had applied for a branch of Emory under the countywide branch banking law.

Q. And it was turned down? A. And it was turned down.

Q. That is what you are talking about? A. Yes.

Q. Do you feel that you can do what the competition requires you to do in selling your banking products and services? A. Give me that again.

Q. Do you feel that you can do what competition requires you to do in selling your bank's products and services? A. Yes, sir.

Q. Getting business. Is your board of directors just a rubber stamp, Mr. Autry? A. No, sir.

Cross-Examination

By Mr. Frisbie

Q. I am not sure if we established it or not, but **[866]** the C&S Emory Bank is an affiliate bank, is it not? An affiliate with C&S National. A. Well, what do you mean by "affiliate"?

Q. Or subsidiary. A. I consider it a wholly-owned sub.

Q. Okay. A. Except for qualifying shares of the directors.

Q. Is there any such thing as a super subsidiary? A. I heard the term, and I guess there is.

Q. Mr. Autry, how are you familiar with the internal operations of the correspondent associate banks, the question in this suit? A. Well, having been in the corresponding bank department, they did not come under the correspondent bank department, but in various of the C&S National schools that we have attended, we have discussed various phases of banking together. Since I have been at Emory, we has discussed various phases of banking together. I remember one school in particular we attended, all of the presidents of the five percenters, super correspondents and correspondent associates, on international banking and how we could take international banking and use it in our own shop, put it into our own operations, sell it to our own customers through international. So, we talk with each other an awful lot.

[867] Q. You never worked for a correspondent associate bank in any capacity; is that correct? A. Only relieving for vacations and emergencies, I have worked for Avondale, DeKalb Bank, and I worked for Buckhead before Buckhead was merged in as a branch of the National Bank.

Q. All right. But none of those correspondent associate banks are involved in this lawsuit. Is it correct to say that you have never served in any capacity with those, as an officer or director of those banks? A. No, sir, I have never.

Q. That is a correct statement? A. That is a correct statement.

Q. And your knowledge of the internal operations of those banks is limited to classes you have attended which were also attended by members of the management of these correspondent associate banks? A. No, sir.

Q. And discussions with these persons who were officers or in the management of these banks? A. Well, unless you would want to consider that my cashier works with the cashier of each one of these banks in any trouble that they may be in, if they are out of balance or if they have trouble in their call reports or this sort of thing, Emory helps out. We [868] kind of serve as a guidepost for them. They come over and we help them.

[869] Q. Who owned the majority of stock of C&S Emory? A. The Citizens and Southern Holding Company.

Q. And who votes this; do you have any knowledge of who votes the stock held by C&S Holding Company? A. It's voted by proxy and by different persons named to vote that proxy. I would say different persons' names are on it. Since I have been there, proxies have been voted three or four times. I think there has been a different person each time than someone who is designated by the holding company.

Q. Does Mr. Hall ever sign the proxy statement? A. No, not since I've been there.

Q. Are there any officers or directors of the Citizens and Southern National Bank on your Board of Directors at the present time? A. Yes, sir.

Q. Are they voting members? A. Yes, sir.

Q. Mr. Autry, is there any doubt in your mind that if Mr. Hall came to you with his stock certificates in his hand in the name of C&S Holding Company and said, "Mr. Autry, I want you to call a special meeting of the Board of Directors and present for a vote the matter of changing the service charges on our checking accounts," **[870]** don't you feel sure that such would happen and such would be passed if it were so desired? A. Well, legally speaking, he owns—if he comes out under proper credentials and he owns the amount of stock the holding company owns, he has a right to hold it. It's immaterial what we think. I will say to you, I have been in my stockholding meetings, I imagine you are referring to the rubber stamp Board. Right after I went to Emory we had a deficiency, what we considered a small deficiency in our deposits to capital ratio and rather than trying to float any new capital issue, we decided we would withhold dividends, and I remember very vividly there were one or two directors who were quite outspoken, that they couldn't see the long-range value of leaving the dividends in the bank and letting the depreciation grow. They wanted their money even though they had to pay tax on it.

We had quite a discussion on it. Naturally, when it gets down to voting the stock, yes, the holding company is going to win. That's all cut and dried.

Q. One more point I want to clear up. Is it not true that four and a half percent is the legal maximum that can be paid on regular passbook savings? A. No, sir, I believe it's four. I may be wrong. But, if it's four and a half, and you don't leave it in a certain period of time, it reverts back. I think regular **[871]** passbook is four.

Mr. Sims: I have no further questions.

The Court: You said you were denied the opportunity to merge with the Decatur National Bank?

The Witness: We applied under the State. We are a State bank and applied.

The Court: You are a State bank?

The Witness: Yes, sir. We were denied to branch. I believe the denial came from the Fed rather than the State.

Mr. Hodgson: I can state that the denial of the application for a branch in Decatur by Emory Bank was denied by the FDIC. At the same time, the mergers were approved. Subsequently, the National Bank just recently has obtained authority to open a branch in Decatur from the Comptroller of the Currency.

The Court: Okay, you may step down.

Mr. Hodgson: Judge, one way or another we have had eighteen witnesses on the stand. Some of them were quite short. This is all we have been able to scrounge up for today with the exception of Mr. Gellerstedt. He said he had to go meet the Jamaican Prime Minister. His testimony will be very brief. If we could just suspend for a short time——

[872] The Court: We will recess for fifteen minutes.

(Whereupon, a short recess was taken.)

[873] **L. R. GELLERSTEDT, JR.,**
being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Doyle

Q. Would you state your name for the record, please, sir. A. L. R. Gellerstedt, Jr.

Q. What is your business, Mr. Gellerstedt? A. I am a general contractor, president of Beers Construction Company.

Q. Have you had any contacts, past or present, with the C&S Bank? A. All my life.

Q. Would you tell us about it, please, sir. A. Yeah, my dad came with the C&S Bank when I was two years old. He was a national bank examiner. We moved here, so I was raised the son of a C&S bank officer. And our company does business with the C&S Bank, and I have served in various and sundry capacities on a C&S Bank's affiliate board of directors.

Q. Have you also had occasion to serve, in addition to your employment capacity, in connection with the City of Atlanta Chamber of Commerce? A. I am the president of the Chamber of Commerce **[874]** this year and have been affiliated with the Chamber for a number of years.

Q. Have you had occasion to have contacts with the C&S Bank of Sandy Springs? A. I was one of the original directors on the C&S Bank of Sandy Springs when it started. I believe that was back in 1960.

Q. And its name at that time was—— A. Citizens National Bank of Sandy Springs.

Q. Citizens National Bank of Sandy Springs? A. No, it wasn't—yes, it was Citizens National Bank of Sandy Springs, and we changed it to——

Q. How did you happen to become a director for that bank? A. I got a call from Mr. Mil's Lane one day, and he asked me if I would come up to his office. I went down and he said he needed to start a bank out in the Sandy Springs area, and he said, "I need some people to be on the board of directors." I says, "What has that got to do with me?" He said, "I want you to be on the board of directors." I said, "I am a contractor; I went to Georgia Tech; that is a technical school." He said, "I need somebody to be on the board of directors," and so I

said, "Well, if you tell me to do it, I will." So that is the way I came to be on the board.

[875] Q. Did you have meetings with regulatory authorities when you opened? A. Yes, had them in your law firm's offices. We were interrogated by several agencies, and I can remember very well them asking me what I was doing there. I told them because Mr. Lane said we ought to do it for the area of the city, and I told them I had no banking background or anything, but I had been very much connected with Mr. Lane and the C&S over the years; that I thought this was something that was needed out there and looked to me like it was an area that was going to grow. I was all for it.

Q. Did you have a concern as to what you could bring to the management or the direction of the bank? A. I could bring very little. I had been raised as a banker's son; I guess he didn't think I had enough sense to be a banker. That's why he sent me to a technical school. No, I didn't have any thoughts.

Q. What was your thought about where that bank was going to get its management and direction? A. From the C&S Bank, because the whole thrust and organization, Tom Cook was then an officer of the bank, was the one out pushing the paper, selling the stock and doing all the leg work for it. So the entire organization of that bank came right out of the main **[876]** office over here, and, consequently, we knew full well that all the time we would be tied in with the help of the C&S Bank to move that bank forward.

Q. Did you have any contact as a contractor with regard to the initial banking quarters of the bank? A. Yeah, I actually developed—we rented a space in a shopping center out there, and I actually developed the space, and I remember we were trying to meet a certain time schedule and it was rather tight. We didn't have all of the approval of the various and sundry agencies, and we were spending money out there. I know I asked Mr. Lane what is going to happen if we don't get this

bank approved. He says, "We will open Lane's Pawn Shop out there." So, yes, I did develop the area and it was opened, then, I believe it was, in December of '60.

Q. When the bank opened, did C&S people have any contacts with the opening of it? A. Oh, yes. They were involved in publicity involving our opening ceremonies and were very much in evidence.

Q. Was the bank known as a C&S supported and sponsored bank? A. There wasn't any question. I think all the people that bought stock bought because of their ties **[877]** with the C&S Bank. It was always conceived that once the banking laws were changed, that this bank would come into the system. Because there wasn't any doubt that this was an area of town that was going to grow in a hurry, and it needed bank facilities up there. So I feel that all of us that went on the original board of directors of that bank felt that once the banking laws were applicable, we would come into the C&S system.

Q. Has the bank been able to serve the Sandy Springs Community, in your opinion? A. I think it would have served it better if it had been a branch of the C&S Bank, in my own personal opinion. But, yes, it served the community; the bank's history is on record. It grew and it grew fast. It has had, I think, a very good effect up there. But, of course, the area itself has developed with such a tremendous rate of speed, I frankly feel it would have been better for the area if it had been a C&S Bank earlier.

Q. At the time, in change of management from Tom Cook to Lou Fortuna, was there any question in your mind, the board's mind, of disaffiliation from the C&S? A. Oh, no. When we got into the obvious problem, when the auditors were out, we had one real bad loan; I believe it was a fellow by the name of Eidson, if I **[878]** remember, Eidson and Seiden, it became evident then that we had some problems in our loan portfolio, and when we dismissed Tom Cook, Howard Starks brought out

Lou Fortuna, brought him off of vacation, and I believe that Lou at that time was out at the Emory C&S Bank, or one of the other banks, so there wasn't any question about where the replacement came from or was going to look for him. He came out of the C&S system.

Q. From your position at the Chamber of Commerce and your experience you have outlined to us of growing up in Atlanta, I wonder if you would give us your view on the relationship of banking business in Atlanta to Atlanta's economic growth. A. I don't think there's any question but that the banking portion of a city plays more of a part with how that city grows than anything else. If you have got a banking community that is very staid and very conservative, a community grows in one way. If you have got a banking community who has faith in the future, who is willing to look at things a little bit differently, it grows in a totally different way. I will never forget that my dad, when he was at the bank, Mr. Lane Young was president of the bank, I remember they gave a testimonial dinner for Mr. Young when he retired. And he said one of the guys got up to give a little say about Mr. Young, **[879]** and said he came to the bank, didn't know anybody, went in Mr. Young's office and told him he wanted to borrow $500. Mr. Young said that he would be glad to lend him the $500. That shows what a man of character he was; he took a mortgage on my car, a mortgage on my furniture and my house, and he lent me the $500.

I remember that versus Lane, when he would go into the lobby and say, "I got money to sell." There's some things I have seen involving the money business in Atlanta. We have got four big banks in Atlanta. I can remember very vividly when we had a drought in South Carolina and the farmers were having a terrible time there, and C&S got some water wagons; I think they got them out of Army surplus, and sent them over to South Carolina. I can remember when the first industrial development department was opened up, when they hired the boy that was in the Columbus Chamber of Commerce to come

here to do nothing but get and develop commerce, move them out in Atlanta, very, very vividly. They brought Carling Brewery out here, which was a vivid thing. What Mr. Lane did, such as the stadium, why he put the money for the plans on the stadium. Once again, before all the legalities had been tied up, and he ended up with a $750,000 bill for a set of blueprints, and I asked him what he was going to do if the plans weren't **[880]** approved, and he says, "I guess I will be the only citizen that owns a set of plans for the stadium."

I remember how he bought the property for the Governor's Mansion, did all of this.

No, the banking industry in Atlanta has been, in my opinion, probably the real reason that Atlanta has experienced the wonderful growth that we have had, and I think Mr. Lane has been the leader; if not the one, one of the leaders in this particular field.

[881] **Cross-Examination**

By Mr. Sims

Q. Mr. Gellerstedt, you said that you thought that the bank out in Sandy Springs would have better served the community if it had been a branch of the Citizens and Southern. How; why is that? A. I think it would be direct management contact rather than through the Board. In other words, the Board served but classically, the management direction from the bank was coming from the Citizens and Southern. I think we felt like a direct contact would have been a better thing, rather than the way it was. I think the loan capacity would have been different if it had been directly with the Citizens and Southern Bank. I think certain other features would have helped the normal growth of the area better.

Q. Would you be able to be more specific in what you mean by other features? A. I think the banking community probably has more to do with the area of growth, the type

growth you have than any other thing. I think if you have a national bank out there, I think there would have been some direction so far as planning and zoning are concerned that you don't have with a smaller bank like this.

I think certain direction so far as getting[**882**] other thrusts of particular movements of companies in the area. I can see a lot of things would have been different if you had a national bank there.

Q. Would you say that during the time you served on the Board of Sandy Springs that the Board of Directors was merely a rubber stamp? A. Basically, yes.

Q. Any exceptions to that? A. Not that I can think of. We joined up with the Citizens and Southern profit sharing plan for our employees, every time they would change one of their plans, we would change our plan. No, we basically didn't give any management direction.

Q. Were you on the Board of Directors at the time Tom Cook left the bank? A. Yes.

Q. Was there any discussion about the question of whether or not Mr. Cook would leave for any length of time prior to the time he left? A. Not that I remember. As I say, the auditors were, we knew we had this bad case with Edson and Seiden, which is a relatively large, looked like, loss for the size bank that we were. The auditors came in and, as I remember, the chain of events, it was relatively fast after that. We decided that Tom ought to leave.

[**883**] Q. Now, you said that you think the banks are important. A. The banks in the community are very important.

Q. In your own opinion, do you believe that the level of competition between banks and the community makes any difference as to the service they provide to the community? A. A. I sure do. I've never seen competition quite as severe as it is in the banks in Atlanta. I am in the contracting business,

which is relatively a competitive field itself. I've seen, in this city, a fantastic competition between Trust Company, C&S, Fulton and First National, over the years. Now we have the Bank of Georgia. It's a very tight competition situation as it is.

Mr. Sims: I have no further questions.

The Court: You may step down.

Mr. Hodgson: Judge, we have no more witnesses available for today.

The Court: Let me check with you where we are, run through your list. Of course, the first two that are on there, Messrs. Jackson and Dunn.

Mr. Hodgson: Jackson and Dunn, Mr. Jackson will be available as our first witness on Monday. Mr. Dunn will not be available until Monday afternoon. Of course, Mr. Jackson is the former Superintendent **[884]** of Banks and Mr. Dunn the present commissioner.

The Court: Are you going to call Mr. Stevenson? I noticed you called two in that category.

Mr. Hodgson: No, sir, the Feds, as I understand, are reluctant to permit the witnesses to testify.

The Court: He will not be here.

Mr. Hodgson: He will not be called.

The Court: Messrs. Cleveland, Bruner, Robinson, Williams, Presley?

Mr. Hodgson: Presley will not be available to come from Augusta.

The Court: Mr. Dick Allen?

Mr. Hodgson: It's problematical about Mr. Dick. The mayor's going to Africa, Mr. Allen's gone again. We urged him not to let a fly bite him.

The Court: But, he is out as far as we are concerned? He will not be a witness. Chatham?

Mr. Doyle: No, Chatham is not going to be.

The Court: Munford?

Mr. Doyle: Yes, sir.

The Court: We have had Mr. Gellerstedt. Connelly, I notice you have got his deposition, I believe.

Mr. Hodgson: Mr. Connelly was among the five **[885]** per-center presidents who has testified to by proxy, testified by proxy.

The Court: We had him a little bit different paragraph from the others.

Mr. Hodgson: Yes, sir, he was included as a five percent president, really.

The Court: You won't have him. That leaves Mr. Baxter.

Mr. Hodgson: Yes, sir.

The Court: So, let's see how many that gives us.

Mr. Hodgson: I believe that's about nine. We may have some disappointments among them. Their absence probably won't disappoint the Court.

The Court: From what I see, then, there should not be any lengthy testimony except that of cross-examination of Mr. Baxter and if Mr. Kinkaid will follow your example there we will have no problem.

Mr. Hodgson: I believe we are in excellent shape, Your Honor. I think we will conclude Monday evening or Tuesday morning.

The Court: I think we will recess until 10:00 o'clock on Monday.

(Whereupon, court recessed at 3:30 o'clock P. M., to reconvene at 10:00 A. M., Monday, October 2, 1972.)

[887] The Court: All ready?

Mr. Hodgson: Yes, sir.

The Court: Fine.

Mr. Hodgson: So Your Honor will have some notion how we think the day will be going, so we may make some plans, we will be planning to call this morning Mr. King Cleveland, president of the National Bank of Georgia, and Mr. W. M. Jackson, former Superintendent of Banks of the State.

The Court: All right.

Mr. Hodgson: And Mr. Walter Eaves, and last in the morning, Mr. Evans Bruner, and Mr. Mack Robinson.

The Court: In that order?

Mr. Hodgson: Most likely. Mr. Robinson asked that he be allowed to go on late morning to suit his problems, and then Mr. Jack Dunn, the current Commissioner of Banking, who cannot be here until after lunch.

The Court: All right.

Mr. Hodgson: Which will leave us with three witnesses, two of whom will be quite brief, Mr. Jimmy Williams, who is coming in the first thing in the morning, and Mr. **[888]** Alex Munsford, who has been out of the state, and we haven't been able to reach him. We will try to get him this afternoon and, if not, the first thing in the morning. And then Mr. Baxter.

The Court: How about Mr. Dick?

Mr. Hodgson: Mr. Dick will not be testifying or available.

The Court: All right.

Mr. Hodgson: Mr. Cleveland, will you take the stand, please, sir.

Don, did you pick all of that up? I guess I was mumbling a little bit.

Mr. Kinkaid: Yes, I think I got it all, thank you.

KING CLEVELAND,

being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Hodgson

Q. State your full name for the reporter, please, sir. A. My name is King Cleveland.

Q. What is your job, Mr. Cleveland? A. I am chairman of the board and chief executive **[889]** of the National Bank of Georgia.

Q. How long have you been with the National Bank of Georgia? A. I have been there almost eleven years.

Q. What has been your course of duties with National Bank of Georgia since you have been there? A. I started at the mid-management level when I first went with the bank, and I have been in primary charge of the bank's growth and development for the last six years.

Q. Previous to that, where were you employed? A. I was with the C&S Bank in Albany, in the trust department.

Q. During your time with the C&S, were you always with the trust department? A. Yes, always.

[890] Q. As chief executive officer of National Bank of Georgia, are you familiar with the metropolitan Atlanta banking market? A. I'd say so, yes.

Q. Why is this? A. Well, it's my business to be familiar with it.

Q. I'm going to ask you several opinion questions about this, Mr. Cleveland. I'm going to ask you first, whether or not in your opinion as the chief executive officer of a major bank in this area, if in your opinion, this area is dominated by or concentrated in one or a few banks, relatively to banking markets as you know them, through the country. A. No, I would say certainly not.

Q. What is the reason for your opinion? A. Well, because we are the smallest of the five major banks and we have had no problem in increasing our share of the market. Although the competition is fierce between the banks in Atlanta, it's a clean market, a good market, growing community. I would say that this city probably has the most aggressive banking competition of any cities in the south and probably in the country.

Q. Are you familiar with the fact that this lawsuit relates to attempts by the Citizens and Southern National Bank Holding Company, Emory and East Point, to **[891]** merge Citizens and Southern Sandy Springs and North Fulton Banks into the Citizens and Southern East Point Bank and Citizens and Southern Chamblee—excuse me—Park National and South DeKalb Banks into the Citizens and Southern Emory Bank? Are you familiar with that fact? A. I am aware of it.

Q. Do you have any opinion as to whether or not if these mergers go through there will be any lessening of banking competition in this area? A. I don't think it makes a bit of difference one way or the other.

Q. Why not? A. The market is open to all of the banks in Atlanta. If we want to do business in those areas, we can make an economic decision to do so. What the Citizens and Southern does with their business in those areas doesn't make any difference to us.

Q. From a competitive point of view, do you have any opinion whether or not these five banks ought to be merged

into East Point and Emory or not? A. I don't think it makes a bit of difference. They are recognized as C&S Banks in those communities. Whether they are merged into the existing organization or remain as they are, I don't think it makes a bit of **[892]** difference from a competitive standpoint.

Q. Could you have done what the Citizens and Southern did? A. Yes, if we had the imagination and the intestinal fortitude and been able to take the business risk involved, doing what they did, we could have done it, yes. So could any other bank in Atlanta.

Mr. Hodgson: No further questions, Mr. Kinkaid.

The Court: All right, you may cross-examine.

Cross-Examination

By Mr. Stern

Q. May we have one moment.

Mr. Cleveland, what is the basis of your opinion that this is a highly competitive market? A. I base it on my day-to-day experiences in competing with other banks in the metropolitan community on a day-to-day basis for both growth, loans, branch locations and all of the other forms of banking.

Q. What other markets were you considering when you were comparing this with the competitiveness of this market? A. Primarily, cities the size of Atlanta, Chicago, Dallas, cities of this sort, where I have the experience of sitting in conference with these bankers from these communities and hear their discussions of their market **[893]** development, bank expansion.

Q. Have you personally conducted banking in any of these cities? A. No, I have not.

The Court: Anything further from you?

Mr. Hodgson: No, Your Honor.

By the Court

Q. Let me ask you a couple of questions. You apparently considered some geographical area in making this statement, even though the boundaries may have been fairly loose. What boundaries did you consider for the market that you say is highly competitive? A. Primarily the metropolitan area, two counties, DeKalb and Fulton.

Q. Do you consider the competition is fairly intense throughout or does it vary in that area? A. Well, Your Honor, we consider it very intense throughout the two counties. That's based to a large degree on the analysis that we made when we started our branch banking program and we are trying to determine what branch locations may be desirable from our standpoint. We made an analysis, statistics in almost every community in the two counties and found places where we wanted to put a branch.

[894] The Court: Well, do you find that the competition to which you refer is primarily there with the largest four or five banks, or does the competition include more than that?

A. It includes more than that. There are several independent banks located in the metro Atlanta area, where we felt that they were so strong in that particular market that we were not encouraged about opening a branch across the street from them.

The Court: And do you find that they compete as effectively in the areas which they serve as the largest banks?

A. Yes, sir, that was our opinion. Because of their ties in the community, that it would be a more difficult market to compete with them than it would one of the large Atlanta banks.

The Court: Anything further from this witness?

Mr. Hodgson: We have no further questions.

The Court: Step down. Thank you.

Mr. Hodgson: Mr. Jackson, please.

W. M. JACKSON,

being first duly sworn, was examined and testified as follows:

[895] **Direct Examination**

By Mr. Hodgson

Q. State your full name for the Court, please, sir. A. W. M. Jackson.

Q. Mr. Jackson, what is your job today? A. I'm retired, former Superintendent of Banks.

Q. How long have you been retired, Mr. Jackson? A. Since January 1st, this year.

Q. Of this year? A. Uh-huh.

Q. Would you tell the Court briefly, sir, the course of your career in the Banking Department, how you got there and how you developed. A. Well, my career in the banking business, banking industry, began about forty years ago. As a matter of fact, it began during World War I. I was in the banking business for about fifteen years, and then in 1945, I became associated with the State Banking Department as bank examiner. I examined banks in the state system for about eight years and then was appointed Assistant Superintendent of Banks in 1953. I remained Assistant Superintendent of Banks until 1963; in July of 1963 I was appointed Superintendent of Banks by Governor Carl Sanders for the term of four years; and then was reappointed at the expiration of that four-year **[896]** term by Governor Maddox for an additional four years, which expired January 1st, this year, at which time I retired. About twenty-six years with the State Banking Department.

Q. Would you describe to the Court in broad terms the functions of the State Banking Department as they existed under your administration? A. Well, the prime responsibility of the Superintendent of Banks in the Banking Department is

to see that state banking in this state is conducted in a safe and sound manner in the public interest. The duties are to charter new state banks, approve applications or disapprove applications for branch banking in the state; to approve mergers and liquidations in the state; to examine all state banks to see that they are complying with the state banking laws; and to see that management is competent and conducts the banking business in a safe and sound manner. That's the general principal function, to examine each state bank once each year.

Q. In connection with this, do you coordinate your business with those of other regulators of banks? A. We work very closely with the Federal Deposit Insurance Corporation, and also the Federal Reserve Bank. We have state non-member banks and state member banks. The Federal Reserve have some supervision over **[897]** member banks, while the F.D.I.C. has supervision over non-member banks. So we work closely with those two agencies in the supervision of our state banking system. The state, of course, can—only charters the banks; those agencies do not charter state banks. The F.D.I.C. is an insuring agency that insures deposits, and their functions are very similar to the state functions in the supervision of our banks.

Q. Mr. Jackson, when you are examining into questions relating to new charters, branch applications and the like, is one of the factors you take into consideration the convenience and needs of the communities to be involved? A. That is correct. That is one of the primary factors, bases.

Q. One of the several factors. I would like to come back to all those factors in just a moment. We might as well do it right now.

What are the factors categorically, by statute, that you are obliged to inquire into with respect to charters and branches? A. When applications are filed for charters, and the same criteria applies under the law to the granting of branch banks

in the state, there's five basic factors that we govern these applications by. One is the **[898]** financial condition of the new bank at beginning of business. It involves a good many details, which we won't relate right here.

The second is the adequacy of capital of the proposed new bank. The third is the management factor of the bank, and the fourth is the convenience and needs of the community in which the proposed bank is to be located, and the future earning prospects of the bank, and such other facts; and circumstances that have a bearing on the proposed bank in the particular locality includes competition and any other factor that might be relevant to the application.

Q. Do these same factors apply with respect to applications for conversion of a national banking association charter to a state banking charter? A. They do when relevant, they do; all of those factors.

Q. Now, Mr. Jackson, in your official functions with the Department of Banking over the years, did you regularly come in contact with representatives from the Citizens & Southern National Bank Holding Company and affiliates? A. Yes, most —in every instance where we examine affiliate C&S banks, the five percenters, where there were criticisms or needs for adjustments in **[899]** management or capital or earnings and so forth, as a general rule, I always contacted Mr. Joe Hall, who had general supervision over the C & S affiliate banks. And when there was a need for any adjustments or improvement in the conditions of the bank, I would generally talk with Mr. Hall about it, and it was forthcoming immediately, such as capital increases or capital notes on debentures and what-have-you, general information. Finally got better results by that than going direct to the president of the particular bank. Of course, we did talk with the presidents of each of these banks, but I relied primarily on Mr. Hall for the corrections that we have covered.

[900] Q. Now, when the Citizens and Southern—well, let me ask the preliminary question. Do you recall the conversion of the Citizens and Southern Chamblee Bank and Sandy Springs Bank from national association into state banking charters? A. Yes.

Q. Do you recall the chartering of Citizens and Southern North Fulton and South DeKalb by your office? A. Yes.

Q. In those actions by your department, I presume they were all four favorable? A. They were all favorable but any condition that might have come up; which we did have in one instance, one of these bank's capital in conversion from a national to a state bank was below our state average of the requirement and as a condition for that bank to convert, I required Mr. Hall, or agreed with Mr. Hall, that the capital after conversion would be increased to that amount that we would ask for.

Q. And that was done? A. It was forthcoming, yes.

Q. Now, in considering these applications for two charters and two conversions, you were aware of the fact, the relationship as you described it, affiliation with the Citizens and Southern National Bank Holding Company; were **[901]** you not? A. That's correct.

Q. And the supply of the management and capital? A. That's right.

Q. And did you consider these to be favorable factors in considering the applications? A. I did.

Q. They carried the name Citizens and Southern, did they not? A. That's correct.

Q. Did you have any objections to their being separate corporations? A. None whatever so long as they didn't conflict with some bank in the immediate locality or area; might have been in the C&S system and change the names to the C&S

system, the bank. We did have one or two objections but they were corrected, you see.

Q. Can you recall what those objections were, so that it's not unclear on the record? A. The Citizens & Southern Bank of a certain community was too near the Citizens Bank of that same community and we required Citizens and Southern to eliminate the Citizens and Southern and adopted the C&S symbol.

Q. Just the C&S symbol rather than the full name? **[902]** A. Right: that's correct.

Q. Mr. Jackson, do you recall the application of South DeKalb, Citizens and Southern South DeKalb Bank, at the time of this organization, particularly? A. I think so.

Q. Do you remember that Mr. Warren Berry was proposed to be president of that bank? A. That's correct.

Q. Do you recall where Mr. Berry was coming from? A. The C&S system.

Q. Did you consider the application itself as being one of Citizens and Southern system? A. Banks, yes, sir.

Q. Did you expect that the Citizens and Southern South DeKalb Bank would have the same general policies, standards and support, management and name as the Citizens and Southern other affiliated banks? A. That's correct.

Q. Mr. Jackson, did you consider with respect to the applications for new branches by Citizens and Southern East Point and Emory, these very mergers that are here under consideration by this Court—I'll put it that way—in connection with the application for the mergers, were not applications filed with your office disclosing the mergers and applying for state branches of Emory and **[903]** East Point? A. Sure.

Q. What was your action on those applications? Was it favorable or unfavorable? A. It was favorable.

Q. Why was it favorable? A. Well, I could see no adverse effects on competition in those particular areas and it makes little difference in the public's minds. They look at the bank as the C&S Bank anyway and I had no objections from any source, from any banker in the immediate area or locality or the state, and the mergers met all of the criteria of the five, six principles that I ennumerated a while ago; I had no choice other than to approve it.

Q. Mr. Jackson, you heard me ask Mr. Cleveland, you heard his response to this question, I'll ask you the question also, do you have an opinion as to whether or not the Atlanta metropolitan area is either concentrated or not concentrated in several banks in the area and whether or not there is much competition here among the banks? A. Well, I would think that. Of course, there is competition among banks in every locality in Georgia, where there is two or more banks. Atlanta is not unlike any other major metropolitan city in the nation. There is competition in all of the major cities. There is **[904]** competition in, very strong competition in Fulton County, among the banks, that's inherent in the banking business. It's inherent in any business where there is competition in it. And I think that, and feel that, competition in the banking business is pretty well diversified among five, six of the major banks in Atlanta which is a healthy condition, and I at the same time feel that the major banks, larger banks of Atlanta, Georgia are going to adequately serve the banking needs for industry, commerce and the public in this state, they've got to grow and expand with the economy. They've got to be allowed to expand and grow to meet the financial money markets of the nation as well as foreign money markets. We do have banks here that have branches presently in foreign countries and you can't do that on a small shoestring basis. If all the banks in Atlanta are going to be stifled by extreme regulations, then I think our banking industry in Georgia would be harmed.

I think it's necessary that our banks grow and expand with our economy in the state. I don't think there is any undue

competition among the state banks. It's not going to hurt competition in the locality.

We have had over the past twenty years probably equal number of new banks as well as merged banks. I see no ill effects it has on banks in Fulton County. The **[905]** same thing in DeKalb County.

Mr. Hodgson: We have no further questions, Your Honor.

The Court: Cross-examine.

Mr. Kinkaid: Just one moment, please, Your Honor.

The Witness: Judge, could I add one point to what I already said? I'd like to add further, Mr. Hodgson, that as far as the approval of those applications for merger was concerned, you understand, as I stated, I had no objection from the bankers of this area, locality, neither did I have any objection from the Federal agencies that had supervision over these banks. I contacted all of them, you see, so I had no alternative other than to approve it.

Cross-Examination

By Mr. Kinkaid

Q. One small point has occurred to me during Mr. Jackson's testimony. As I recall, Mr. Jackson filed an affidavit several months ago in connection with the motion to lift the statutory stay, I believe, that exhibit has been offered. That affidavit, rather, has been offered here as an exhibit. I'm wondering whether that affidavit has been withdrawn in view of Mr. Jackson's live testimony today?

[906] Mr. Doyle: It has been withdrawn.

Q. Mr. Jackson, you were talking about competition in Atlanta. Could you tell us what is the geographic areas you had in mind when you were describing what you feel is good competition in this area? A. Well, the trade area of any bank is the area in which it expects to get its banking business from. Now,

there was a time in the history of banking in Atlanta when just the city limits of Atlanta was considered its trade area. But, communities can outgrow the banking trade areas and expand out and overflow into the adjoining communities which become a part of the trade area of metropolitan Atlanta banks.

[907] I would say now your trade area is—embraces metropolitan Atlanta, which would include Fulton and DeKalb Counties at the present time. Now, in another twenty-five years it might take in another county, but I think the Atlanta banks have got to follow, and that brought about your countywide branch-banking field. They have got to follow their customers and their trade area as it expands. And I think it expands to DeKalb County at the present time. That is part of metropolitan Atlanta.

Q. Now, Mr. Jackson, could you take a rough guess as to how many banks you chartered while you were Superintendent of Banks? A. In the state?

Q. Yes, sir. A. I had those statistics in my office, but I would say, since I was Superintendent, it would be just a guess now, I'm thinking more perhaps in the whole state, probably sixty, maybe seventy-five during my term as Superintendent.

Q. Yes, sir. A. Now, I would say probably in the Atlanta metropolitan area we have had twelve or fifteen new banks chartered. I think as time goes on and our expansion of our economy continues, there will be more **[908]** new banks chartered in the metropolitan area; wherever there is a need, necessity for the bank, whether there is a branch or not, we will charter a bank if there is a need for it.

Q. In connection with chartering of some of the banks involved in this litigation, like South DeKalb, for example, you mentioned that C&S relationship, if I recall you correctly, was a factor in your—a favorable factor in your decision to grant the charter. A. Yes.

Q. In that connection, I would like to ask you, can you take a rough guess as to how many of the banks that you yourself chartered as Superintendent, first of all, were organized with assistance from C&S, and then try to guess how many were organized with assistance from other large Georgia banks.

Mr. Hodgson: If Your Honor please, I rather object to "try to guess". If he wants to ask his best recollection, if that is what he is really saying——

Mr. Kinkaid: Well, that's what I mean, sure.

The Court: Try asking him.

By Mr. Kinkaid

Q. As best you can recall, can you give us a **[909]** figure on that? A. No, I will have to get that question again.

Q. Okay, sure. First of all, well, perhaps I could try to shorten it for you. It might be easier this way. Wasn't it true that most of the banks that you chartered as Superintendent were not started with assistance from C&S? Wouldn't that be a fact? A. I think that would be a fact, that most of the banks, sure, were not affiliated with the C&S system, sure, yeah. I would say, now getting back to your question, probably there might have been as many affiliated with other major banks in the state or more than the C&S five percenters. See, I only dealt with the C&S five percenters, that is, affiliated with the C&S system.

Q. Yes, sir. A. But there were more, probably, banks chartered with other affiliation of major banks in the state than just C&S, sure.

Q. I gather from what you say, you can recall chartering banks that, for example, were started with the assistance of Trust Company? A. Yeah. See, all the major banks are affiliated with some banks one way or the other as the correspondent relationship. So, the far majority of them were **[910]** chartered with the correspondent relationships and help from other major banks than the C&S system, yeah.

Q. Yes, sir. And wouldn't that be a favorable factor, also, in your decision to grant the charter to a new bank, namely, it has—is getting assistance from, say, Trust Company and at formation is going to have Trust Company as its correspondent bank? A. Well, as a general rule, you see, a new application, you have got to know who the—is going to be the active management of that bank, you see. As a general rule, in these five-percent banks, well, the C&S—the proposed or the proponents of the bank have asked C&S to help them organize a bank or furnish management for the bank, you see, and, as a reward, I guess, they let them have five percent interest in it. And the C&S furnishes the management for that bank. Now, the correspondent relationship of the banks, sometimes one of these major banks will allow one of their men to go into one of these new banks and run it, which experience would have to meet the requirement for management factor as to experience and so forth, you see. And so they do—it operates both ways. But, I think in most cases the proposed applications that's not a five percenter, they furnish their own man, you see, and he may not be with a correspondent bank; he would **[911]** come from some other bank.

Q. Well, now, did you have cases where—now, these would be banks not being started with C&S assistance? A. Yeah.

Q. In those cases, weren't there cases where the new banks, the new bank's management was found with assistance from the correspondent bank? A. That is possible, yes, yes, sure.

Q. And in those cases, would that be a favorable factor in your eyes, not the only one, but would that be one favorable factor in granting the charter for the new bank? A. Favorable factor because the correspondent suggested somebody to run it?

Q. Uh-huh. A. Well, there again, we're going to base the decision on ability of that man that is proposed to run the bank; of course, the help of a correspondent would be a help, no doubt, to strengthen the management of the bank.

Q. Didn't you, as a matter of fact, check out the people who were going to be running the banks that were formed with C&S assistance? You didn't just take C&S' word? **[912]** A. No, we check out each man that is going to be executive officer of the bank.

Q. Whether he comes from C&S or some other bank? A. Or someone else, yes. We have got to know what his experience has been. If the C&S proposes some installment loan clerk to run a bank, we wouldn't approve it. See, same way with any other correspondent.

Q. Do you recall chartering the Peachtree Bank & Trust Company in Chamblee back in about 1960? A. The Peachtree Bank & Trust Company happened be be chartered before I was Superintendent of Banks, and I'm not as familiar with the details of the chartering of that particular bank. I think W. D. Tripp was the Superintendent of Banks at that time, but I feel that—and I think that that was a close affiliate of the Trust Company of Georgia. How much stock they had in that bank at the beginning of the business, I am not familiar with it.

Q. I forgot, you started in '63; is that right? A. '63, yes. But, I do know that I chartered a bank in Sandy Springs for them, and that was an affiliated bank with the Trust Company. In fact, they owned all of the stock in that bank, the directors of the proposed bank, and they furnished management for the **[913]** bank, and that bank was subsequently merged with the Trust Company of Georgia.

Q. Yes, sir. Mr. Jackson, do you take into consideration the board, the proposed board of directors for a new bank that is applying for a charter? A. Yes, we do.

Q. What do you look for in the board of directors for the new bank? A. Well, our examiners that make these investigations of charters are trained in their investigation. They meet with the proponents of the new bank, have a lot of information to get to fill in to complete the report, and so forth. And then,

they interview each proposed director individually, separately from the group, and they have a lot of questions they want to know and find out what--if there are any affiliations with any other bank; if any agreement has been made to resell or repurchase stock in his bank; how he is going to finance the purchase of this stock, and if there's going to be any repurchase agreements we find out all of that information, as well as his financial standing in the community and whether he has had any, of course, connection with any unfavorable business or dealings; whether he has ever been convicted of any crime or fraud. We don't want men like that on the board of directors, **[914]** so we go into every phase of a man's life nearly. His education, his family life and everything. Sometimes a man's family life might disqualify him because of family situations. That applies to management even, you see. Yes, sir, we go into all of those factors.

Q. Is one of the things you are looking for in directors of a bank that is being considered for a new charter, is one of the things you are looking for in that bank's board independence of thought, a group of men who will run that bank independently in the best interest of that bank? A. Sure.

Q. Is that a factor, sir? A. Why, sure, sure, absolutely. That is a responsibility of the directors. If he doesn't carry out and meet his responsibilities and the bank gets into trouble, he could very easily have a liability suit attached to him.

Q. I would like to show you something and ask you if you can recall this particular little booklet. Do you recall that, sir? A. Yes, sir. We send that to every proposed director of a new bank when it is chartered.

Q. I note that this appears to have been written in 1967; is that your recollection also? **[915]** A. About that time, yes.

[916] Q. Do you recall whether the directors of C&S South DeKalb and C&S North Fulton were given copies of this booklet? A. Well, as to the end, the particular bank, I couldn't re-

call. Our men had instructions at a certain stage of the chartering of every bank that this book be mailed to every director of every bank. Now, if they missed one, I wouldn't know. But, as far as to my knowledge, it was mailed to every director of every new bank, that is my men's instructions.

Q. Excuse me. Why were your men instructed to see to it that each new director of a new bank got a copy of this book? A. Well, we want the directors of every bank to realize their responsibilities, know what the responsibilities and duties are. The law doesn't excuse ignorance of the directors from approving something that's unsound and unsafe. You've got a responsibility to all of the rest of the stockholders as well as the public to operate that bank, see that it's operated in a sound and safe manner.

Q. Do you recall when you wrote that booklet, indicating that the directors of a new bank would most likely need help and advice from a lot larger banks, primarily the correspondent banks in the various respects? A. Sure, that's one of the essential and important **[917]** things that an independent bank or small bank should, who doesn't have expertise, management expertise, to consult his major correspondent for advice.

Like a customer of the bank would go to the bank and ask for advice on a certain matter, sure that's an essential thing in our banking industry, common practice all over the nation.

Q. Now, on the other hand, you didn't want your Board of Directors to get too dependent on somebody else for that kind of advice, did you? A. Well, if the Board is not familiar with certain phases of banking, I think it's their responsibility to acquaint themselves with it. I know of no better way than correspondents.

Q. Excuse me, Mr. Jackson, maybe we could just take a look and there are an awful lot of things in this book that are very interesting. I don't want to take up your time. A. Thank you.

Q. I enjoyed reading it. Could you look at 14, sir? This would be down, last paragraph where the heading is "The Individual Director." And it says, "A great number of bank directors when they are first elected have no technical knowledge of banking and feel that they must depend on someone who does." That's what you have just **[918]** been telling us; right, that these people have to get help and advice somewhere? A. Since they are really not bankers themselves, that's right.

Q. This is what you have in mind in this passage? A. Sure, a lot of successful businessmen in the community never had any banking experience, and have to rely, naturally, on somebody to know something.

Q. The next sentence, you say, "This should not become a habit." What did you have in mind with that expression? A. Well, it shouldn't become a habit of relying on someone else to make the decisions for you continuously. I think you should acquaint yourself as far as possible with banking transactions and matters and act upon your own judgment.

Q. Now, when you say relying on someone else, by someone else do you include there another bank, as well as the president of the bank, of the small bank itself? Would you include both of those? A. President of the small bank itself has to consult and confer with its major correspondent many times on banking matters. He doesn't know all the answers himself. His investment policies, loans, credit information **[919]** on major borrowers, loans in excess of his legal limits, naturally, the major bank is in a position of all that knowledge and credit information and can be helpful to him.

Q. Did you have in mind here that—— A. Frequently they participate with the small bank in loans and what have you, and even sell them loans.

Q. Well, on the other hand, you don't think the Board of Directors should become, should make a habit out of relying on

its correspondent bank? A. Well, I don't think a man that knows what he is doing will rely on somebody else to act for him.

Q. Do you think—was it your intention that the Board of Directors of the small bank make its own competitive decisions? Was that one of the things you did not want them to rely on someone else for?

Mr. Hodgson: I would appreciate it if Mr. Kinkaid would explain to Mr. Jackson what he means by competitive decisions. As I see it, it can go all over the ball park.

Q. (By Mr. Kinkaid) I feel a little funny advising a former State Superintendent what competitive decisions are. I will give it a whirl.

I'm not trying to be presumptious with you, I would think of things, you could think of many more, the setting of interest rates on savings accounts, determining **[920]** the amount of charges on checking accounts, setting of interest rates on various types of loans. Would you consider those competitive decisions made by banks? A. Well, of course, the interest on savings deposits is a matter determined by regulations under the FDIC. They have no choice in that.

Q. You mean the maximum determined? A. Yes.

Q. Do all banks pay the maximum? A. To my knowledge, as far as I know. I don't know of any that are under the maximum.

Q. What type of accounts are you thinking of, sir? A. I'm thinking about savings.

Q. Passbook or regular savings accounts? A. Savings, passbook, certificates of deposit, all that's governed by regulations with the FDIC as to maximum interest rates they can pay.

Q. Do you happen to know offhand what the maximum interest rate on passbook savings accounts is today? A. I guess it's four percent on mine. I think that's about the maximum on passbook savings.

Q. Are you aware that C&S National pays three and a half percent on such accounts? A. Well, we don't check every bank to see what the **[921]** minimum interest rates they charge on, pay on savings deposits and time certificates. We don't, as a general rule, as long as it's not over the maximum rate, we are not concerned whether it's under. That's a matter for the Board of Directors of the bank to determine.

Q. Would you consider that a decision that—— A. Would have to be made by the Board.

Q. The Board would have to take into consideration, among other things competitive, what competition the bank is getting; is that right? A. Sure, of course, banks are placed at a disadvantage, competitive-wise, for deposits with savings and loans. Banks can't compete with them.

Q. Do the banks compete with each other nonetheless for savings accounts? A. I don't think that's something that—two banks in the same locality generally pay the same interest rates, as a general rule. You might have one single bank in a community that might have a minimum under the regulated amount or the maximum. But, it's almost reasonable for banks to compete equally on savings deposits by the same interest rates.

Q. If in the City of Atlanta, if there were—if the interest rates paid on savings accounts, for example, ranged anywhere from three and a half to four percent, what **[922]** would you say as to competition in that regard among those banks? A. Let me say this. You're talking about paying interest rates in the City of Atlanta, and as I said a while ago, we, as a general rule, don't check every bank to see if they are paying interest under the maximum rate, minimum, whatever minimum they are paying. But, you do have a savings bank here in Atlanta, and I don't know what the interest rate is paid on savings, but I would think that it would be equal to the commercial bank savings account, passbooks. There is a bank that's four to five million dollars less than it was fifteen years ago. I don't know what is

the competition there, lack of paying maximum savings for savings bank or not, but there again, it's a matter of your Board of Directors, the management of the bank. If a bank is going to grow and expand, meet competition in its community, it's got to meet competition and if you don't branch, if you don't do this in your major cities, you are going to dry up, more or less. The fact that management is one of the most major factors of banking. That is one of the greatest problems we have today is banks have grown so large and we have got so many banks, new banks, it's very difficult to find management for all these new banks, I mean suitable, experienced management. That's why you have problem banks. Where you have banks **[923]** getting in trouble is resulting from management. You have had some testimony right in this case here that pinpointed some of that. You only heard one side of the coin, that management is their problem. When a bank gets into serious problems and you can't get it corrected, what are you going to do with it, liquidate it or merge it? Which is better for the public?

Q. Earlier, when you were talking with Mr. Hodgson, you indicated that one of your primary functions as Superintendent was to check to see that your banks were complying with state banking laws. Do I remember you correctly in that regard? A. Right.

Q. Did you check to see whether your banks were complying with any laws other than state banking laws? A. Well, if we have any reasons to believe that they aren't, of course, we would check into it. I don't know of any laws other than regulations of the Federal Reserve Bank and FDIC that they would be in violation of.

Q. Mr. Jackson, what I have specifically in mind was the Federal Anti-Trust laws. A. Yes. Yes, sure, we take that into consideration, as I gave you one of those factors, six major factors, competition in the locality. Sure, we take that into consideration, and I will say this, that in twenty-five **[924]** years

that I have been with the Banking Department, we have never chartered a bank that ever got into trouble for lack of business because of competition. Every bank we have chartered exceeded our estimated projections and we take competition into consideration.

Now, value in mind this, that we have rejected more applications than we have approved because the lack or weakness in the needs and convenience in the community. There again, competition comes into it. Sure, we take that into consideration.

Q. In other words, if I understand you correctly, by competition, you mean—— A. Banking competition.

Q. There is too much competition for the new bank or whether there is too little competition and, therefore, a new bank is needed? A. I think very definitely that the needs of the community factor outweighs the competition that you are speaking of. But, nevertheless, the competition is such that you can't warrant the needs and necessity, you can't grant the charter.

Q. And that's what—that's all you have in mind when you speak about looking into competition? A. The Federal laws, yes, we take the competitive factors in mind.

[925] Q. Do you take into mind—are you familiar with the Sherman Act? A. Yeah. I don't know of any—any law that we are in violation of there.

Q. No, perhaps you didn't understand me. Do you check to see whether your banks are complying with the Sherman federal Anti-Trust Statute? A. Yeah, yeah, we checked 'em all. See if they are complying with the Federal Reserve Board Act as to the interlocking directorships and all of that. There's no phase that I know that we overlook.

Q. Did you check—have you checked in that regard with respect to the state C&S banks that you, yourself, have examined that are defendants in this case? A. We give the C&S applica-

tions the same type rigid investigations that we give all the rest of them, of all the factors very definitely.

Q. In what regard? A. As a matter of fact, we restrict—place restrictions to some extent on the C&S five-percent banks. We place restrictions that are not in the law on all the charters of banks.

Q. I am not sure if I understand what you have in mind by restrictions. **[926]** A. Go beyond just what the law calls for. Well, our state law limits C&S Holding, any holding company to five percent of the stock. Well, there again, if a holding company has got five percent of the stock, we don't allow other associated members of the family to own controlling stock in that bank, you see. The law—the Holding Company Act did at one time, prohibit stock ownership by the associated families of holding companies, but the '60 Act repealed that law completely. Now the law does not prohibit stock ownership by members of the families of the holding company, and it doesn't prohibit, although we limit the amount that a holding company can have less the stocks of the members of its family to not more than twenty-five percent of the stock in that. And the same thing would apply to any other bank or independent bank. We don't want the board of directors of any new bank to own controlling stock in the bank. And I have never granted a charter during my superintendency of office where they owned more than that, perhaps—except in one instance, and that was the one you approved the merger, the Trust Company of Georgia at the Sandy Springs bank, and your own Division approved it.

Q. This is the one—you mean the federal board approved and we did not sue; is that what you mean? Is that what you have in mind? **[927]** A. No, it wasn't a member of the Federal Reserve system—well, the Trust Company was, that's right; but the affiliated bank at Sandy Springs was not.

Q. Incidentally, Mr. Jackson—— A. What difference does it make whether the Federal Reserve Board approved it or not with your department?

Q. You are absloutely right. It doesn't make any difference to us. A. Why wouldn't you act on the non-member, a member bank the same as the non-member bank?

Q. We try to treat all alike, sir. Incidentally, Mr. Jackson—— A. Of course, we can—wait a minute now; we are all professionals and we can agree or disagree, and I disagree with it.

Q. You certainly have that right, and I respect it. Mr. Jackson, in your experience as State Superintendent, can you say whether or not small banks tend to rely on advice given them by their correspondent banks? A. Sure they rely on it to a large extent and degree, yes. When they ask for information and advice, sure, they rely on it. A small bank in the rural communities don't have the—as I said a while ago, the **[928]** equities that your banks in Atlanta have.

Q. Well, in your experience as State Superintendent, would you say that that reliance by the small bank on its large correspondent results in the small bank being operated virtually as a branch of the large correspondent? A. Well, not as a correspondent, no, but as an affiliate bank, yes. When you take——

Mr. Kinkaid: Your Honor——

A. When you take these five percenters bearing the name of C&S, the general public looks at that as the C&S Bank. They don't know whether it is an independent bank or not, and the C&S management is in with that bank with the C&S name. Now, that is more of an affiliate bank than a correspondent relationship, and it makes little difference in the public's point of view whether it is a C&S independent bank or a C&S branch bank or a C&S National Bank. It makes little difference; that don't change the competition—competitive factor one iota.

Mr. Kinkaid: Your Honor, at this time, I don't know what number we are up to, but I would like several parts of this little booklet that I think are relevant to various issues here, I would like to introduce this **[929]** as our next exhibit.

The Clerk: 216.

The Court: It is so admitted.

Mr. Kinkaid: May I have just one moment, sir?

By Mr. Kinkaid

Q. I think you were just indicating that these C&S banks, as long as they have the C&S name and management that has been provided by C&S, they are all the same from a competitive standpoint. Are the C&S correspondent associates, nonetheless, were they not nonetheless chartered by you to be independent banks? I am thinking primarily of South DeKalb and North Fulton.

Mr. Hodgson: If Your Honor please, I object to the form of the question, not knowing what independent means; if he means chartered as separate corporations, of course, that is a fact. It is an undisputed fact. But as to what he means by "independent" is another question.

Mr. Kinkaid: What I have in mind is the thing that we have been talking about that you had in your booklet as to the duties and functions and responsibilities of the directors of banks.

[930] The Court: Why don't you ask him if he expected the directors of those banks to live up to what is outlined in the booklet?

Mr. Kinkaid: May I ask your question, sir, just use your question?

The Court: I assume his answer is yes.

A. Yes.

By Mr. Kinkaid

Q. Thank you, sir. A. Now, let's see just one minute.

The Court: Mr. Jackson, I think you have answered, but he threw you a question that could take us a year to answer, I'm afraid. You put it all in a book, and presumably you expected the directors to live up to the obligations that are set out. Your

answer is affirmative, and I think that is sufficient for his purposes.

Mr. Kinkaid: Thank you, Mr. Jackson.

Mr. Hodgson: We have no further questions, Your Honor.

The Court: All right. Thank you very much, Mr. Jackson.

Mr. Hodgson: Thank you, Mr. Jackson.

The Court: We will stand in recess **[931]** for fifteen minutes.

(Whereupon a recess was had.)

[932] Mr. Doyle: Call Mr. Evans Bruner.

Whereupon,

EVANS BRUNER

was called as a witness by and on behalf of the defendants, and having first been duly sworn, testified as follows:

Direct Examination

By Mr. Doyle

Q. Would you state your name for the record, please? A. W. Evans Bruner.

Q. By whom are you employed? A. Trust Company of Georgia Associates.

Q. In what capacity? A. Executive vice president.

Q. Is Trust Company of Georgia Associates a registered bank holding company? A. It is.

Q. Mr. Bruner, were you the man at Trust Company and Trust Company Associates who primarily had contact with Peachtree Bank & Trust Company? A. Commencing at about 1961.

Q. All right, sir. And the bank had begun approximately a year prior to that time? A. Right.

Q. Focusing on the time when Mr. Charles Ginden **[933]** was first made president of that bank, which I believe he testified was sometime in 1967, focusing around about that time, did you regularly attend meetings of the Board of Directors of Peachtree Bank & Trust Company? A. Pretty regularly, yes.

Q. Could you tell us at that time whether you attended all of their meetings or was it on the basis of when you were invited? A. Well, it was sort of a standing invitation, but I did get out there most times, but I suspect it is about that time when our own attorney said, "Let's just you don't, don't be constantly in attendance."

Q. All right, sir. And then, thereafter did your attendance change so far as Trust was concerned? A. Yes.

Q. Can you describe it or characterize it thereafter? A. Well, it was when they asked me to attend.

Q. And it was on a frequent or infrequent basis? A. Infrequent.

Q. All right, sir. Did you—or, beginning at that point and continuing thereafter, did you or Trust Company or Trust Company Associates routinely provide regular supervision of the management of Peachtree Bank? **[934]** A. You say before or after?

Q. After. A. After?

Q. Yes, sir. A. No, if they asked us questions, we would hop on the telephone, and if they wanted to talk about something, I would talk.

Q. You responded to the requests as they came? A. Oh, yeah, yeah.

Q. The negotiations were with the bank and—— A. Oh, yes.

Q. ——not with the Trust Company associates? A. (Witness shakes head negatively.)

Q. At that time, their pension plan, I believe, was that the same or different from the Trust Company Bank? A. It had never been the same, as far as I know. It was one they adopted of their own.

Q. When Peachtree Bank hired a man—— A. Wait a minute; it's not a pension plan, it is a profit-sharing plan.

Q. The profit-sharing plan; they didn't have a pension plan? A. No.

Q. When Peachtree Bank hired an employee or a **[935]** junior officer or an officer, if they hired a Trust Company man, they approached him just the same as if a stranger would have approached that man? A. Well, there are certain courtesies that any business extends to another. When he is going to talk to somebody working for him, if there is a reasonable sort of relationship, they would call up and say, "Listen, you have got a man working with you and I would like to talk with him." They would say, "Well, he is open".

Q. The Peachtree Bank & Trust Company had a board of directors of its own. Would you characterize that as a strong, independent board or as a weak board, or how would you tell us about it? A. It was strong and it was independent.

Q. All right, sir. From your relationship—— A. And we encouraged it, or at least, I encouraged it.

Q. Yes, sir.

From your vantage point at Trust Company Associates, you knew that there was the Citizens National Bank of Chamblee, which is now the C&S Bank of Chamblee, Citizens & Southern Bank of Chamblee? You were aware that it was there? A. Oh, sure, very much.

Q. And you had a familiarity, from your vantage **[936]** point or a view from your vantage point of the relationship

between that bank and the C&S National Bank downtown? A. It was generally through the eyes of those at Peachtree Bank & Trust.

Q. All right, sir. Would you tell us how you saw the relationship and characterize the relationship between Trust Company Peachtree Bank, on the one hand, C&S and C&S Chamblee, as you have told us you saw it, on the other hand. A. Well, the Peachtree Bank & Trust was one where we—to display the relationship, you sort of have got to say what each—what the one was in Peachtree Bank & Trust, I mean the differences. It was not certainly one of domination. It was a matter of advice and assistance. We did not direct business, redirect business. If somebody was out there and they called and wanted to know who they can do business with in Chamblee, why, of course, we would say Peachtree Bank & Trust. But it wasn't a matter of directing business to that bank. In other words, existing customers; whereas, through the Peachtree Bank & Trust Company's eyes, why, it was fairly open knowledge that at least they said that the C&S would say to customers living in that area that might be doing business with some of their **[937]** banks downtown, says, "Listen, you live out in Chamblee; why don't you do business with our bank out in Chamblee? They can take care of you, and as far as your capacity is concerned, if they need any more, why, they can get it here, and we know you. But let them wait on you." They, reportedly, would sell portions of even their credit card to that bank for them to own. I don't know whether that is true, but that was the report.

In earlier days, before Gordon's time, why, I remember one occasion when a rather large deposit showed up in the figures, and it looked like a million dollars. Since they don't just appear out of the thin blue, it either was a factor—was accepted as a fact that their major correspondent had made a substantial deposit with them in order to give them some monetary support. Folks in Peachtree Bank said, "How come Trust Company

doesn't do something for us like—". You know, we sort of would like to, but they said, "No, we don't operate that way." That was sort of the difference.

[938] Mr. Frisbie: Your Honor, if I understand Mr. Bruner's testimony correctly here, he is testifying not through his own knowledge at all and not through his contacts at all, but what, through what is heard from various unidentified persons at Peachtree Bank & Trust Company, what they believe is the occasion, relationship over at Chamblee Bank. As such, I would consider that it becomes double hearsay. I object strongly to his testifying any further than from his personal knowledge.

The Court: I overrule the objection. I suspect the appraisal of competition, the way people may react may depend upon double and triple hearsay, in fact. That's what the businessmen have to act upon in situations like that. But, you can point it out on brief the nature of the testimony. You may answer.

Q. Mr. Bruner, based, then, on your vantage point and position where you were and the relationship as you knew it between your position and Peachtree Bank, can you characterize for us the difference, if any, between the relationship of Trust Company and Peachtree Bank on the one hand and C&S, C&S Chamblee on the other as to whether or not it was a closer relationship or more distant relationship?

[939] Mr. Frisbie: Your Honor, again, if I may, we have not established that Mr. Bruner knows anything at all about the relationship between C&S Chamblee and the C&S system, and it would be the same objection, again, this is the fact that we are talking about and not the competitive effect of something that becomes—this should be a fact that he should testify to and establish that he has personal knowledge of.

The Court: Well, I don't think he can testify as to what it actually is, but the effects to the extent that it motivates his actions, Peachtree Bank & Trust Company, he can testify.

The Witness: As I said in the beginning, I have to look at all of these things from a standpoint, through the eyes of Peachtree Bank & Trust because they were my point of contact.

Q. Yes, sir. A. Very definitely, there was an at-arm's-length relationship among friends as correspondents in the Peachtree Bank & Trust. Whereas at the Chamblee Bank, from every source that I've got any information, it indicated a much more inter-working relationship, exchange of business to direction of business, and support of it through employees transferred and that sort of business, even to **[940]** the extent that we, everything we did was almost measured by it. This is not as much as what the C&S Bank does at the Chamblee National Bank. I said, "Well, that's as far as we're going to go,"

Q. Yes, sir. Thank you, Mr. Bruner. He's with you.

The Court: Does the entire Trust Division join the enemy? I've noticed two, now.

Mr. Frisbie: Just for the record, these ties were——

Mr. Hall: ——bribes.

Mr. Hodgson: We tried to supply enough for the whole division, if they needed more.

Cross-Examination

By Mr. Frisbie

Q. Mr. Bruner, is it the substance of your testimony that the Peachtree Bank & Trust Company enjoyed the same relationship with the Trust Company of Georgia that its regular correspondent did? A. Closer.

Q. Closer? A. Yes, sir.

Q. You have stated that somewhere in 1967, some—'68, somewhere around there, you stopped attending regularly the Board meetings at the Peachtree Bank & Trust **[941]** Company and that was on the advice of counsel? A. As well as their

agreement with the—I say agreement—with the understanding of Peachtree Bank & Trust, I would not be going there.

Q. All right. A. Except as they called.

Q. Was the advice given you at that time strictly to have less attendance or have more infrequent attendance at the directors' meetings or did it extend beyond that? A. That we should do no more for them than we would do for a correspondent bank.

Q. Then, it would be a fair statement to say that one of the main reasons that your relationship with Peachtree Bank & Trust Company lessened, the main reason that your policies and relationships diverged was because your attorneys advised you of this? A. I was having a lot of fun doing it, yes.

Q. Does the term retail oriented bank have any particular meaning to you? A. Yes, sir.

Q. Could you explain what a retail oriented bank as opposed to a wholesale oriented bank would be? A. I can explain what my idea is, having to do with consumer banking more than it would be, as a greater proportion of your business, I think, where you have, **[942]** certainly, if your larger customers, where your livelihood depends on the walk-in customers and the ordinary man on the street and you must do business with him.

Q. Is there any one bank in town that is generally known as a retail oriented bank as opposed to the other? A. More so?

Q. More so. A. Yes, I think—again, this is just my understanding—I would say that the Citizens and Southern is certainly more retail oriented even though it does have a sign out there at the airport—what is it—seventy or some eighty of the largest firms do business with us—

Mr. Frisbie: I have no further questions.

The Court: You may step down.

Mr. Doyle: Mack Robinson.

appendix

JOINT APPENDIX

Volume III, Pages 601-883

Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

No. 73-1933

UNITED STATES OF AMERICA,
Appellant,

v.

CITIZENS AND SOUTHERN NATIONAL BANK, et al.

On Appeal from the United States District Court for the Northern District of Georgia

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JURISDICTIONAL STATEMENT FILED JUNE 24, 1974

PROBABLE JURISDICTION NOTED OCTOBER 21, 1974

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JOINT APPENDIX

INDEX

VOLUME I

	Page
Relevant Docket Entries	1
Complaint by the United States Filed November 2, 1971	9

Answer to Complaint Filed by the Defendants May 5, 1972 24

Transcript of Proceedings Held Before the Hon. Charles A. Moye, Jr., United States District Judge for the Northern District of Georgia Commencing September 25, 1972:

Appearances [2] 45

Testimony of W. D. Padgett—
Direct examination [7] 49
Cross-examination [74] 89

Testimony of William Farr, III—
Direct examination [85] 96
Cross-examination [123] 118

Testimony of Herbert Leonard Megar—
Direct examination [151] 135
Cross-examination [161] 142
Redirect examination [171] 148

Transcript of Proceedings Held Before the Hon. Charles A. Moye, Jr., United States District Judge for the Northern District of Georgia commencing September 26, 1972:

Testimony of James A. Parker—
Direct examination [180] 151
Cross-examination [227] 178
Redirect examination [245] 188

Testimony of Charles B. Ginden—
Direct examination [256] 195
Cross-examination [296] 219
Redirect examination [309] 226

Testimony of Warren Jackson—
Direct examination [312] 228
Cross-examination [352] 251

Transcript of Proceedings Held Before the Hon. Charles A. Moye, Jr., United States District Judge for the Northern District of Georgia commencing September 27, 1972:

Testimony of Warren Woolsey—
Direct examination [361] 257
Cross-examination [408] 284
Redirect examination [424] 292

Testimony of Samuel L. Skogstad—
Direct examination [425] 293
Cross-examination [426] 294
Redirect examination [476] 322
Recross-examination [494] 333

VOLUME II

Testimony of Mills B. Lane—
Direct examination [508] 343
Cross-examination [539] 361
Redirect examination [562] 374

Transcript of Proceedings Held Before the Hon. Charles A Moye, Jr., United States District Judge for the Northern District of Georgia commencing September 28, 1972:

Testimony of Howard S. Starks—
Direct examination [582] 386
Cross-examination [604] 400
Redirect examination [633] 417

Testimony of Joseph Hall—
Direct examination [637] 420
Cross-examination [683] 445
Redirect examination [744] 481

Testimony of Robert Daniel Handley, Jr.—
Direct examination [747] 483
Cross-examination [765] 494
Redirect examination [774] 499
Recross-examination [774] 500

Transcript of Proceedings Held Before the Hon. Charles A. Moye, Jr., United States District Judge for the Northern District of Georgia commencing September 29, 1972:

Testimony of Warren L. Berry—
Direct examination [777] 501
Cross-examination [784] 505
Redirect examination [802] 516

Testimony of Roy B. Holland—
Direct examination [802] 517
Cross-examination [805] 519

Testimony of Hubert Harris—
Direct examination [808] 521
Cross-examination [812] 523

Testimony of Lewis C. Beasley—
Direct examination [815] 524
Cross-examination [821] 528

Testimony of Joseph M. Ream—
Direct examination [824] 530

Testimony of Henry T. Collingsworth, Jr.—
Direct examination [830] 534
Cross-examination [837] 538

Testimony of Gordon B. Trulock, Jr.—
Direct examination [842] 542
Cross-examination [853] 548

Testimony of Ben C. Cook—
Direct examination [854] 548
Cross-examination [859] 552

Testimony of Merrill Autry, Jr.—
Direct examination [862] 554
Cross-examination [865] 555

Testimony of L. R. Gellerstedt, Jr.—
Direct examination [873] 559
Cross-examination [881] 564

Testimony of King Cleveland—
Direct examination [888] 569
Cross-examination [892] 571

Testimony of W. M. Jackson—
Direct examination [895] 573
Cross-examination [905] 579

Testimony of Evans Bruner—
Direct examination [932] 594
Cross-examination [940] 599

VOLUME III

Testimony of J. Mack Robinson—
Direct examination [942] 601
Cross-examination [946] 603

Testimony of Walter Eaves—
Direct examination [953] 607
Cross-examination [956] 609

Testimony of E. D. Dunn—
Direct examination [960] 611

Testimony of Nevins Dennis Baxter—
Direct examination [974] 619
Cross-examination [1004] 636

Depositions:

Warren Lanham Berry—
(GX-198) 671

Dr. William M. Cason—
(GX-199) 4.1-6.13 739

Gus Lockett Connelly—
(GX-200) 4-29.3; 53.13-54.22 741

Thomas E. Cook—
(GX-201) 4-26.4 760

Edward E. Elson—
(GX-202) 10.23-12.7 774

Louis J. Fortuna—
(GX-204) 19.6-22.3 775

Hubert L. Harris—
(GX-206) 4-28.7 778

T. Robert Hazelrig—
(GX-207) 4-28.13 793

Dr. W. Andrew Irvin—
(GX-208) 12.4-12.21; 18.10-18.24 811

Hugh F. Lane—
(GX-209) 812

Alva G. Maxwell—
(GX-211) 4-6.13 848

Dalton F. Scott—
(GX-215) 34.24-36.3 851

Economic Report (Excerpts):

Volume 1—[5-14]
[83-84]
[114 "E"-130 "B"]
[139-147] 852

Volume 2—Exhibits 20, 28, 29, 53, 54, 55, 69 877

Government Exhibits:

GX-33 B E-1
GX-33 C E-5
GX-33 D E-7
GX-33 E E-10
GX-35 ..... E-13
GX-36 ..... E-24
GX-37 ..... E-28
GX-38 ..... E-38
GX-104 ..... E-57
GX-105 ..... E-89
GX-106 A E-113
GX-107 ..... E-121
GX-108 ..... E-122
GX-109 ..... E-123
GX-110 ..... E-124
GX-111 ..... E-125
GX-112 ..... E-126
GX-113 ..... E-127
GX-114 ..... E-128
GX-115 ..... E-132
GX-116 ..... E-133
GX-117 ..... E-134
GX-118 ..... E-135
GX-119 ..... E-137
GX-120 ..... E-139

GX-121 ..... E-140
GX-122 ..... E-141
GX-123 ..... E-142
GX-124 ..... E-143
GX-125 ..... E-145
GX-126 ..... E-146
GX-127 ..... E-147
GX-128 ..... E-148
GX-134 ..... E-153
GX-136 ..... E-155
GX-138 ..... E-156
GX-139 ..... E-158
GX-140 ..... E-160
GX-142 ..... E-161
GX-148 ..... E-162
GX-151 ..... E-164
GX-153 ..... E-165
GX-162 ..... E-166
GX-163 ..... E-172
GX-164 ..... E-198
GX-166 ..... E-204
GX-169 ..... E-206
GX-170 ..... E-215
GX-177 [1-15.6] E-217
GX-177 B E-232
GX-177 D E-235

GX-188 ..... E-240
GX-189 ..... E-241
GX-190 ..... E-242
GX-191 ..... E-243
GX-192 ..... E-249
GX-193 [1-6, 8, 10, 12, 14, 16, 18, 20, 22, 24, 28] ... E-251
GX-194 ..... E-268
GX-216 ..... E-269

Defendants' Exhibits:

DX-94 ..... E-305
DX-113 ..... E-329
DX-125 ..... E-330
DX-152 ..... E-331
DX-266 ..... E-337
DX-267 ..... E-460
DX-268 ..... E-502-2
DX-269 (Sections A, D, F, K and V) E-572
DX-270—Vol. I, GOG 9.27 and GOG 9.6 ..... E-692
Vol. II, GOG 26.01 and 26.011 ..... E-699
DX-277 ..... E-703
DX-278 ..... E-705
DX-300 ..... E-706
DX-301 ..... E-835
DX-302 ..... E-840
DX-310 ..... E-860

DX-311 ..... E-1024
DX-313 ..... E-1717
DX-316 ..... E-1804
DX-317 ..... E-1816
DX-318 ..... E-1822
DX-320 ..... E-1826

Notice of Appeal filed March 25, 1973 ..... E-1841
Order Noting Probable Jurisdiction dated October 29, 1974 ..... E-1842

Whereupon,

J. MACK ROBINSON,

was called as witness by and on behalf of the defendants, and having first been duly sworn, testified as follows:

Direct Examination

By Mr. Doyle

Q. Would you state your name for the record, please, sir? A. J. Mack Robinson.

[943] Q. Mr. Robinson, you are appearing here pursuant to subpoena, are you not? A. Yes.

Q. Mr. Robinson, you have ownership interest in various banks located in Fulton and DeKalb Counties; do you not? **[944]** A. I do.

Q. All right, sir. With regard to those, could you identify them for us, please, by name? A. What percent ownership do you——

Q. No, sir, just name the banks. A. Well, I have stock in Roswell Bank, Fulton Exchange Bank, DeKalb Exchange Bank, Citizens Bank of Clarkston, DeKalb County Bank.

Q. Are any of those banks located within the city limits of Atlanta? A. No.

Q. Could you tell us why this is so, sir? A. Competition is very keen in Atlanta, and I chose to operate outside the city.

Q. Could you give us a general description of the geographic area in which each of these banks compete? A. Well, of course, we are in the unincorporated area in most places; however, Roswell and Alpharetta are both incorporated, and so is Clarkston, but DeKalb Exchange Bank and DeKalb County are unincorporated areas, and we compete with the nearest bank. In some cases it is only two miles away; some cases, it is as far as five or six miles away.

Q. Would you say, then, that within that kind of **[945]** mileage radius is the area where your banks are most effective competitors? A. Yes. A few of our customers bank where they work, downtown Atlanta, but the majority of them, we think bank where they live.

Q. All right, sir. With regard to the Roswell Bank located in Roswell, Georgia, could you tell us the other banks that are also located in the Roswell area? A. At the present time, Fulton Exchange Bank has a bank in Roswell, and then the C&S Bank of North Fulton has a bank in Roswell.

Q. Now, in competing against that C&S Bank of North Fulton, can you tell us whether you compete against it the same or differently as if it were a branch of C&S National? A. Well, I would never know the difference if I didn't read the newspapers, because the sign looks the same to me.

Q. All right, sir. Do other factors go into it, in addition to the sign, other factors go into your answer? A. Yes.

Q. Could you describe those for us, as well, just as you see it from the competitive vantage point? A. Well, I think C&S furnished the president **[946]** to the bank. I think he came from the parent company. And I just consider them very tough competition, and I consider it just the same as a branch of the C&S Bank.

Q. Can you tell me, then, sir, if C&S Bank of North Fulton were merged pursuant to its application into the C&S Emory or C&S East Point Bank, whether or not you believe there would be any difference in banking competition in the Roswell area? A. I can't see as it would change at all, if they left the sign C&S out front.

Q. With that, Mr. Robinson, you do believe that there is a place for independent unit banks, such as you have named

that you are interested in in the Atlanta—in the area, is that correct? A. Yes, I do.

Q. You believe they have a future? A. Yes.

Mr. Doyle: No further, questions, Mr. Robinson.

Cross-examination

By Mr. Frisbie

Q. Mr. Robinson, taking the DeKalb Exchange Bank for a minute, does it not have a branch? A. Yes, it does.

Q. Would you please name for me, taking the main **[947]** office of DeKalb Exchange first, who it is, which banks are considered its chief competitors? A. Well, it is apparently outside the City of Atlanta, and you run into a number of banks. The Trust Company of Georgia, C&S, First Bank of Glenwood, or First National Bank of Glenwood, National Bank of Georgia, and possibly another one that I can't think of right at the moment. They are all about two miles away.

Q. And these are the chief competitors? A. Okay.

Q. Taking the branch now of that same bank, could you also name which would be the chief competitors for the business that that branch has? A. C&S Bank has one or two; First National Bank of Atlanta has one in Decatur. Of course, Citizens Bank of Clarkston is only two or three miles away, and I am sure there is another one that I can't think of the name.

Q. Taking the Citizens Bank of Clarkston next, could you also name the bank or banks that would be its chief competitors? A. A couple of C&S Banks, one at Avondale Estates, one at one of the exits on the perimeter; I am not sure which one, the name of it. But it is about **[948]** two to three miles away. Now, a couple of other Atlanta banks have opened on Memorial Drive; First National Bank has opened and still an-

other bank that I can't recall the name. It is one of the large Atlanta banks.

Q. Now, going to DeKalb County Banks which bank or branches of banks would be its major competitors? A. Peachtree Bank & Trust Company, C&S Bank, both, on both sides, or C&S Chamblee, I guess. And then, C&S on North Druid Hills; Fulton, I think, has a bank there. First National has one on Cheshire Bridge Road. Those would be our main competitors. And Toco Hills is not far away. That bank has a branch, too, and you run into another group of banks, but it is still about the same ones, Trust Company and C&S.

Q. Are all of these banks you have just named within this two- to three-mile radius that you talked about as being the area within which you get the majority of your business? A. I don't think any would be over three miles; they are all within two or three miles, yes.

Q. Do you consider them competitors only because they are within a certain distance or do these banks also draw customers out of this area? A. Both. They have large advertising budgets, far larger than we do, and any of the big Atlanta four **[949]** or five banks can attract people easier than we can because of their enormous amounts of money they spend on advertising.

Q. You stated that you could not tell the difference, words to this effect, that you couldn't tell a difference between a correspondent associate bank and a C&S Bank or branch, except for the sign out front; is that substantially correct? A. Being in the banking business, I read and I keep up with what is going on. But were I not in the banking business, it would be very difficult; I couldn't tell one from the other.

Q. You personally understand the legal distinctions then? A. Personally, yes, but——

Q. Do you know of your own knowledge the exact relationship or operating policies carried on between any of the correspondent associates and the C&S National Bank? A. No, none whatsoever.

Q. So, then, actually what you mean then is, from appearances, from the outside appearances you really can't tell the difference between these banks? A. And from competition.

Q. Do you feel that the Roswell Bank is able to **[950]** compete with the C&S North Fulton Bank? A. Yes, but let me clarify it. Roswell Bank is seventy-one years old and well-established and has thousands of customers. And this helps us. But, as far as the new people coming into the community now, I am sure C&S gets more than 50% of the people because of their enormous advertising budget.

Q. Can the Roswell Bank compete on terms of prices paid for services for loans, interest rates, service charges, things of this sort? A. Oh, yes, I think we are competing in all those areas.

Q. Is the North Fulton Bank generally known as a rate-cutter in that area? A. No, it is not.

Q. From your experience, generally, in banking all around in the Atlanta area here, can you characterize competition generally with C&S banks and branches according to prices? A. Well, I have never known C&S to get involved into cutting rates. I will add this, if you want—if you are asking me this, I think they are as tough competition as any bank in Atlanta.

Q. Can you tell me any one main difference that you know of between a corresponding associate and a **[951]** branch of C&S National, in your experience? A. I am just not aware of their internal operation. I can't answer that.

Q. Would the board of directors bring anything to mind? A. Well, they do have a board at the Roswell bank, C&S Bank

of North Fulton. I am under the assumption if it was a branch they would not have a board.

Q. Does the existence of a board of directors at a competitor bank affect, say, the Roswell Bank competitively? A. It hurts us.

Q. In what respect? **[952]** A. Well, they pick some of the most prominent men in the community, put them on the Board, and it's customary they do their banking with that bank. If my memory serves me right, several of them moved their banking from Roswell to C&S. When they went on the Board of C&S, of course, they have friends and I'm sure they solicit their friends to be customers of C&S. So, having a Board there does hurt us.

Q. Would it be a fair statement to say that the requirements of having a Board of Directors on a bank and a competitor, as opposed to a branch, would make that bank more competitive in regards to your bank business if it was a branch? A. Well, it's more competitive from a standpoint of having a Board, but if they didn't have the Board and called it another name, they would not be as competitive. I didn't state that exactly right. As long as they have the C&S name, they are very competitive, and, of course, the Board even makes them more competitive because of the friends of all the Board members, they are able to influence them to bank with C&S.

Mr. Frisbie: Thank you, sir.

Mr. Doyle: No further questions.

The Court: You may step down.

Mr. Doyle: I call Walter Eaves.

[953] Whereupon,

WALTER EAVES,

was called as a witness by and on behalf of the defendants, and having been first duly sworn, testified as follows:

Direct Examination

By Mr. Doyle

Q. Would you state your name for the record, please, sir? A. Walter A. Eaves.

Q. What is your occupation, Mr. Eaves? A. I'm president of Roswell Bank, Roswell, Georgia.

Q. How long have you served in that capacity? A. About fourteen and a half years.

Q. Is the Roswell Bank that you are president of now the one that was just described by Mr. Robinson on the stand? A. It is.

Q. Would you tell us what other banks are located in Roswell, Mr. Eaves? A. A branch of the Fulton Exchange Bank and C&S Bank of North Fulton.

Q. From your vantage point as a competitor at the Roswell Bank, tell us how you view the C&S Bank of North Futlon as an independent bank or as the C&S Bank. **[954]** A. Well, I've always viewed them as a C&S Bank.

Q. Would you tell us why, please, sir? A. Well, according to the information I had available at the time, C&S organized it and started it.

Q. Is it fair to say, then, that your view today is the same or different from the view when the bank was organized? A. I had no reason to change it.

Q. When the application to merge was filed, were you contacted by any of the bank's regulatory agencies to see if you had any opposition to the merger? A. Yes, sir.

Q. Would you tell us what your response to them was and why? A. I had no opposition.

Q. Would you tell us why you had no opposition to it? A. I didn't think there would be any overall change in the operation of the bank as far as the competitive standpoint is concerned in competing with us.

Q. Do you believe that your bank can compete with the branches of large, downtown banks? A. It is tough, but we have been able to so far.

Q. Can you tell us what competitive posture the Roswell Bank takes so far as competing against C&S North [955] Fulton is concerned? A. I'm not sure I really completely understand your question. If you mean what do we do in trying to compete, basically we feel that we have to go to the customers themselves, retail oriented type of thing. We don't have many large depositers. We are not in the wholesale bank field. We are not large enough to be there. We have to go out and try and do it with personal service with the customer. We contact the customers. I have a lady that does nothing but this. We ask for their business. We don't have an advertising budget that compares with C&S or Trust Company, or First National either. So, we end up trying to do all ours through personal relations, first class service. This is the idea we use.

Q. Does the community identification enter into it at all? A. Very definitely.

Q. I wonder if you would elaborate on that. A. We have been there for seventy-one years and this has a big effect on the people who have been living there many years. Also it has an effect on newcomers when they found that the bank had been established that long.

Q. You regard that as an important element in your competition? A. It's helped us tremendously.

[956] Q. All right. You told us what your response was to the regulators and why. Is that your same view today with regard to the merger application? A. We still have no objection to it.

Q. Because, and because why? A. We feel like it would be practically the same operations that we are competing with now.

Mr. Doyle: That's all.

Cross-Examination

By Mr. Stern

Q. Mr. Eaves, are you familiar with any other banks up around your neck of the woods that have a relationship with the C&S system which, to your belief is similar to that of C&S North Fulton? A. Not my personal knowledge, no, I do not. The closest thing we would have would be the C&S Sandy Springs and also C&S of North Springs, one of them is related to the East Point Bank and the other one is a separate organization, separate corporation.

Q. Right. When you were talking about how you viewed the initial organization of North Fulton, you mentioned that your opinion was based in significant part, as I understand it, on the information you had available at the time? A. Yes.

[957] Q. That's things you saw and perceived; is that it? A. Yes.

Q. Would you say that this was similar to the situation when Sandy Springs opened up? Is this the kind of thing you are talking about? A. No, Sandy Springs was, I'd have to say would be different from what the North Fulton was as far as what knowledge I had.

Q. It was different. Did it have the C&S name? A. Sandy Springs started off, I believe, with the name Citizens National Bank of Sandy Springs. I'm not sure, I think that was the name.

Q. Now, do you not personally recall it held itself out a number of years as an independent bank? A. For several years it did.

Mr. Stern: Yes. All right, no further questions.

Mr. Doyle: We have no further questions.

By the Court

Q. How is the bank run? Is it enlarging, growing, or what? A. We have been growing, yes, sir.

Q. Are you still growing? A. Yes, sir.

Q. Is that in part due to the phenomenon of people **[958]** moving to the suburbs? A. Yes, sir, this is a great part of it.

Q. Moving from without the central city into the perimeter area? A. This is having some effect. We are also having the effect of many new people moving into the Georgia area, Atlanta area, locating in our situation. The highway's got a lot to do with this.

Q. Despite what competition you're receiving, do you think your bank is in a healthy position, growing, has a good future? A. We certainly hope so.

The Court: All right, thank you.

Mr. Hodgson: We have no further witnesses available at this time. We will have Mr. Dunn after lunch.

The Court: Any particular time in mind as to after lunch as to when he's going to be here?

Mr. Hodgson: We can have him any time, any time after about 12:30. He will not have had his lunch by then. One-thirty, 1:45 is all right with us.

The Court: Do you intend to put on your economic witness after that, because I imagine Mr. Dunn will take only a short time?

[959] Mr. Hodgson: Yes, sir.

The Court: How long do you anticipate Mr. Dunn will take?

Mr. Hodgson: He should be relatively brief. I should think we would have him only on the stand maybe five or ten minutes and the Government not very long, I would guess. Dr. Baxter will be at the mercy of the Government. We have some preliminary points we want to make through him. I presume we'll put him on in order not to——

The Court: As I get it now, we have only Messrs. Williams and Munford to go.

Mr. Hodgson: Yes. Mr. Williams cannot be here until early in the morning. So, we are ahead of schedule. I understand from Mr. Kinkaid the Government's rebuttal is going to be quite brief also.

Mr. Kinkaid: That's correct, sir.

The Court: Well, maybe you can make a decision about Dr. Baxter at lunch. I hope you will make an affirmative decision. I hate to waste an afternoon.

We will stand in recess until 1:45.

(Whereupon, court was adjourned at 12:20 o'clock P. M. to reconvene at 1:45 o'clock P. M. the same day.)

[960] (Whereupon, at 1:50 o'clock, p.m., the Court reconvened the proceedings.)

Mr. Hodgson: Mr. Dunn.

E. D. DUNN,

being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Hodgson

Q. What is your full name? A. E. D. (Jack) Dunn.

Q. Mr. Dunn, I am going to ask you questions in two compartments, if I may, the first related to circumstances before you

became Commissioner of Banking and Finance, and the second after.

Before you became Commissioner, what was your principal occupation? A. I was president of the bank known as Glenwood National Bank, now known as First National Bank or First National Bank of DeKalb.

Q. Where is it located? A. Located at the corner of Glenwood and Candler Roads, the southern part of DeKalb County. Has a branch at Belvedere, which is at Memorial and Columbia.

Q. When was that bank formed? A. 1952.

[961] Q. When did you first become connected with it in any fashion? A. I was elected a director in 1953.

Q. What was your next position with that bank? A. President in 1961.

Q. How long did you remain president? A. Until 1969.

Q. Why did you cease being president at that time? A. We sold controlling interest in the bank to a man here in Atlanta, and I was moved up to chairman of the board.

Q. Did you remain with the bank for any period of time after that? A. Approximately a year and a half.

Q. Until what date, approximately? A. Well, officially until the board of directors' meeting in December of 1971.

Q. At Glenwood National, during your tenure as president and, subsequently, as chairman of the board, who were your competitors? A. The nearest competitors were two C&S banks, one at Belvedere and one at South DeKalb. And, then, to the east of us approximately some four or five miles, was the Trust Company in East Atlanta. Then to the north **[962]** of us in Decatur, the First National Bank and the Fulton National. Then a little east of that, C&S in Avondale. Then to the direct east of us, Lithonia, Conyers and Covington. The nearest bank south of us was McDonnough.

Q. What did you consider to be your trade area at that time? A. Well, over into East Atlanta, because we were only about a thousand feet outside the city limits of Atlanta in DeKalb County. Then, Decatur, Avondale and then all the way to Lithonia, Conyers and Covington, to the east, and south to McDonnough.

[963] Q. What determines your trade area so far as you are concerned? A. Well, unfortunately, of course, that's how my trade area was limited in one respect because of the branch banking laws. We were only allowed to have a branch two miles from our home office. As far as the trade area itself, it was any place where there was not another bank or bank system that did not allow us to actively compete in those areas in which there were not in those areas at that time other than two C&S.

Q. Now, the area involved was determined by the proximity of competitors around you; is that what you're saying? A. Yes.

Q. The fact that competition moved into, within that circle, served to circumscribe the area further or to affect it at all? A. No, it just made it a little more competitive. It didn't affect the trade area.

Q. As chief executive officer of the Glenwood National over these years, how did you look at C&S Belvedere, competitionwise, as it related to other C&S Banks such as the National Bank, Emory Bank or the DeKalb Bank? A. Well, of course, they were our only very close **[964]** competition. We consider them more or less like the public did, that they were a part of the C&S Bank. Most people thought they were actually branches of the National Bank.

Q. Did you know whether or not they had C&S trained people in them? That is to say, Belvedere and later C&S South DeKalb? A. Yes, sir, I was aware of that.

Q. When C&S Belvedere merged into C&S DeKalb, did you observe or experience any change in your competitive environment as a result? A. No, sir.

Q. Why not? A. Well, it was still the same system as far as we were concerned.

Q. Did you ever consider affiliation with the Citizens and Southern system? A. We never considered it, no, sir. Mr. Mills Lane come out and visited us one day and offered to buy us out. But, we never considered it other than this particular meeting.

Q. Why not? A. Well, we were independent and had wanted to remain independent. As far as we were concerned, we were happy the way we were. We had known, if we had sold out, they would more or less end up with control from the **[965]** standpoint of management and usually they wanted enough stock that they could let some of their friends have it. As far as we were concerned, we just preferred to remain independent.

Q. Eventually you sold out, though, didn't you? A. Yes, sir

Q. Why did you do that? A. Well, as I mentioned a few minutes ago, we at first in DeKalb County were not allowed to branch at all and not even have one branch. We ended up actually going to the Comptroller of the Currency and contending there was no law in the State of Georgia that would keep us from having branches anywhere in the State of Georgia. The Comptroller agreed with us and gave us a branch at Belvedere. Then, the Georgia Legislature hurriedly passed what is known as the Village Banking Bill. The only trouble, it restricted us to one branch no further than two miles from the home office. I still contend the law should have been no less than two miles rather than the extent of two miles. Then, we realized we would not be able to expand, grow and compete and serve our customers, and we did not feel like there would ever be a county-wide branch banking law, so we sold out because we did not feel like our future was so good. We could not compete.

Q. And subsequently, the county-wide branch banking **[966]** law was passed? A. Yes, about six months too late.

Q. Now, Mr. Dunn, turning to the second compartment of your testimony, what is your present title and job? A. I'm known as Commissioner of Banking and Finance for the State of Georgia. It used to be the Superintendent of Banks, of course, the Banking Department.

Q. What are the functions of your office? **[967]** A. Of coure, we are the regulatory authority for all state banks, several other institutions, but, basically, state banks.

Q. And trust companies? A. And trust companies, and credit unions and state savings and loans. And, of course, our basic responsibility is to be sure that banks are examined on a regular basis, which is once a year, be sure they are solvent for protection of the public and stockholders, and all of the many other facets of a regulatory authority as far as approval of charters, mergers, branches and charter applications for new banks. I could go on in detail, but if there's anything you want to ask me——

Q. As a result of all of this, does this bring you into more or less contact with bankers around the state? A. Yes, sir, I think I last month toured the entire state on group meetings, and I met some three thousand bankers.

Q. Do you receive telephone calls and letters from them in some regularity? A. Yes, sir, daily.

Q. Have you had such regular contacts with people at the C&S? **[968]** A. Yes, sir.

Q. Primarily whom? A. Well, as far as—now, you talking about the C&S National or are you talking about the affiliates, five percenters, or what?

Q. All of these. A. Well, of course, the bankers who are state bankers, five percenters or affiliates or whatever you want to call them, make their formal requests to us, and then at times I talk to some of the people in the National Bank who assist them in either filing branch applications, or increases in stocks,

or mergers or anything in that category. You want me to name some of the people, is that what you want me to do?

Q. No, sir, not particularly, as long as you include Mr. Hall. A. (Nodding affirmatively) He has been there a long time.

Q. Yes. A. Excuse the joke.

Q. Have you found your prior conception of the C&S five percenter relationship to be changed as a result of your new position as Commissioner of Banking and Finance? A. No, sir, I think all bankers, particularly me **[969]** being a direct competitor or they being a direct competitor of mine, I had pretty common knowledge of exactly how it worked, and it hasn't changed. Now, other than, of course, I have more information available now, I know.

Q. And your opinion about them has not changed? A. No, sir. I think a little more of them now than I did before, Mr. Hodgson.

Q. Mr. Dunn, in your official capacity as considering applications for branches by non-C&S banks, let's take, for example, Trust Company of Georgia, into market areas where C&S five-percenter banks are located, let's take C&S Sandy Springs or Chamblee, did you consider the C&S five-percenter bank, Chamblee or Sandy Springs, for example, more able or less able to withstand branch competition from the major Atlanta bank, let's say Trust Company, than if they had been independent unit banks? A. No, they would definitely have an advantage as far as competition is concerned.

Q. Why would you consider that to be the case? A. Well, of course, as you are well aware, and most of the people in the room are, banking is a very competitive business. And the bank who is closely affiliated, whether they are a five percenter or **[970]** independent and well-affiliated, not from a managed central control standpoint, with one of the larger banks, is much

better able to serve the community simply because they are more knowledgeable. They have the resources of the larger banks in order to make larger loans that they would not be able—allowed to make, as far as their own capital structure would be. And, also, of course, the day of the computer is here and this sort of thing. They are better able to serve their banks, whether it be a five percenter or another type of affiliate.

Q. Would the existence of the common name have any effect on this? A. On the public?

Q. Yes, sir, insofar as its ability to compete with this Trust Company branch coming out is concerned? A. Well, it certainly is an advantage to a C&S affiliate. Let's use a state bank for an example.

Q. Yes. A. To be able to just display the "C&S", to compete with, as you mentioned, a Trust Company.

Q. And does the fact that it has continuity of C&S management help it or not? A. There's no question about that it helps them.

Q. With respect to the merger applications that **[971]** are at issue before this Court, Citizens & Southern North Fulton and Sandy Springs into Citizens & Southern East Point, and Citizens & Southern Chamblee, Park National and South DeKalb into Citizens & Southern Emory, do you believe that there would be any competitive impact one way or the other from these mergers? A. Mr. Hodgson, not at this time, simply because people have always felt that these were C&S banks, and I think I mentioned earlier, most people thought they were branches of the C&S National. Most of my competition with them in the past, people thought they were dealing with basically C&S National, rather than a state bank.

Q. Might it be an advantage to the banks being merged? A. Well, it would be an advantage to the banks, yes, sir.

Q. Why is that? A. Well, they would be able to make larger loans, they will be able to simplify a lot of their operations. They could better serve the customer.

Q. Mr. Dunn, do you regard the Atlanta area banking market or any part of it either to be overconcentrated or not competitive? A. Not at this time. It has been times in the **[972]** past when it was, but at this time it is not overconcentrated. Of course, we have had a—since 1971, we have had some 125 branches, I think, in metropolitan Atlanta since countywide branching went in, but up until that time, we had some areas that needed additional banking.

Mr. Hodgson: No further questions, Your Honor.

Mr. Kinkaid: One moment, if Your Honor please.
Your Honor, we have no questions.

The Court: Thank you, Mr. Dunn, you may step down.

A. Thank you.

[973] Mr. Hodgson: Dr. Baxter, take the stand. I need to do a little housekeeping, Your Honor. It will take me only a moment.

Mr. Kinkaid: Excuse me, Your Honor, while everybody is getting set up, there's one point I'd like to raise here. Perhaps we can get some indication of the scope of whatever dialogue Mr. Hodgson and Dr. Baxter have planned in view of the fact that it's our understanding that so far as direct testimony was concerned that was already in the form of the written report.

Mr. Hodgson: That's exactly right. The way we propose to do this, Your Honor, I believe it would be appropriate, is that Mr. Kinkaid is exactly right. We intend to go into none of the direct as such. I thought it would give Mr. Kinkaid and the Government overall a better bull's eye to shoot at, however, if Dr. Baxter did these things. He, first, of course, has to authenticate his report and highlight his methodology because this has subsequently been attacked by Dr. Skogstad's second affidavit

clarifying the reasons for data, all in response to that affidavit, and the Government's trial brief and Dr. Skogstad on testimony.

I would intend to keep this within as **[974]** brief a period of time as possible. I really think that perhaps Mr. Kinkaid would be better served by this. I'm quite certain it will give us a better cohesion to Dr. Baxter's testimony if that is all right. That will be my goal, in any event, and if I may say so, Your Honor, since matters have gone along so nicely for which the Government is certainly very much a part of and we appreciate it, the case proceeded so quickly, we propose to move this as fast as possible, and assuming we may even be able to finish today, we have called Mr. Williams and told him there is no need for him to come up in the morning. We are going to make every effort to finish today.

Whereupon,

NEVINS DENNIS BAXTER

was called as a witness by and on behalf of the defendants, and after having first been duly sworn, testified as follows:

Direct Examination

By Mr. Hodgson

Q. Dr. Baxter, state your full name for the reporter, please. A. Nevins Dennis Baxter.

Q. Your report contains your complete credentials, Dr. Baxter, but would you tell the Court, if you don't **[975]** mind, the areas in which you have attempted to specialize? A. Well, for the past several years I have spent almost all of my time consulting in the banking field with large and small banks on a variety of management problems, and a good deal of regulatory, consulting, branches, mergers and charters.

Q. We have previously filed, Dr. Baxter, in this court, an economic report supported by a volume of exhibits and a sec-

ond volume being analyses, analyses of the competitive and convenience and needs, effects of the five individual mergers. Were each of these prepared by you or under your direct supervision? A. They were.

Q. And are the facts and data included therein verified by you and the people under your direct supervision? A. Yes, sir, they were.

Q. Are the conclusions reached yours, reached as a result of your expertise and the data which had been gathered and tabulated in these reports? A. Yes.

Q. There is a customer survey, Dr. Baxter, which has been objected to on the grounds that the results were too incomplete to be adequate, on the further grounds that the questions may be misleading. Referring to your **[976]** customer survey, which is part of your report, were the questions included in those surveys designed in accordance with generally accepted actuarial principles, sampling matters and procedures which, in your opinion, insure reasonable reliability of the responses, were of the size sufficient to satisfy reasonable reliability of the responses and were the numbers of responses as proportionate to the number of questionnaires mailed, and were all of these sufficient to make the result, so far as you are concerned, statistically reliable and significant? A. Yes, sir, they were. We used, probably a much larger sample than was necessary so as to insure given the response rate that we expected, which was about what we got, that we would have a sufficient number of questionnaires returned in each category to do the detail of analyses that we want to. Samples were very carefully designed to get results to a high degree of reliability.

Q. Dr. Baxter, since your methodology and that of Dr. Skogstad seems to have differed, would you please tell the Court how you set about to analyze what you considered to be the economic issues of this case? A. Well, my first interest was

learning what I could about the banking in the Atlanta area, who the main competitors were, what methods they used to compete; how they identified themselves in the public's minds; what **[977]** types of services they offered; where they were located; historically, how they had developed and how they had obtained their market positions.

I look at banking very much as a people business. It's one that is very difficult to analyze by mere statistics, published data, concentration, numbers of banks. These have to be examined and I do that, but clearly they can't tell the whole story about competition. For this reason I conducted a very large number of interviews of C&S people, competing bankers, customers, business customers, large and small, mostly in the Atlanta metropolitan area, and specifically, in the trading areas of the defendant banks.

I also did some interviews and specifically in Belvedere and also in Savannah and Augusta to see what the competitive impact, if any, of the merger of five percent banks there, which had been concluded, to see what the competitive impact was. Of course, in addition to these interviews, I wanted to gather some primary data about where these banks compete and where they do business. And, to do this, we studied very carefully the break out of the source of business accounts by zip code. Then, we refined this to account address because zip codes can often be misleading.

Q. Business of what banks? **[978]** A. The defendant banks as well as other banks in the metropolitan area, data from which was derived from the answers to the Government's interrogatories.

When we received those, we looked at what their service areas were, as well. As I pointed out, these were later extended to get a better definition of where the accounts came from because zip codes can often be much larger than the real market area.

Finally we conducted the customer surveys to understand some of the reasons behind why people choose to bank where they do.

Q. With regard to the forms of statistical studies you conducted, please explain their purposes and indicate the results. A. The main purpose of the statistical study was to compare banking in the Atlanta metropolitan area with other areas around the country. I think it's very difficult to learn very much from a concentration measure, number of banks, population per bank, per banking office in a vacuum without reference to that meaningful comparison of other market areas around the country.

And, so, we made these comparisons and concluded as the Court describes in detail, that Atlanta really is not, in relative terms, a concentrated market at all, but population, per bank and per banking office is **[979]** lower, that is, than other bench marks, Atlanta being well-banked. These population per office figures are really indicative of how hard banks are forced to compete because no bank voluntarily puts out branches unless its competitor forces it to do so to get the business and keep up. The branches serve as the convenience to the public. They serve as a competitive measure whereby banks can chase after business against each other. So, we looked up the source of indexes of market structure relative to comparisons.

Q. Dr. Baxter, a very large portion of the report, as I recall it, very much of the middle part deals with issues of, as the statute puts it, any section of the country. This is commonly known as the relevant market or geographical market? What is the relevance of all that investigation and all of those data to the issues in this case? **[980]** A. Well, frankly, Mr. Hodgson, I think that the market area here is of really no relevance. If it is found, as I believe to be the case based on my investigations, that these banks are C&S banks, they compete as such; they are competitors; they are customers; they themselves view themselves as C&S banks; they provide C&S banking services; if

that is the case, there's not really much competition between them and the precise areas in which they draw their business is not really very important.

However, I felt it was necessary to investigate the situation fully to assume that this wasn't—that my finding about competition was not based on the fact that they were C&S banks, although I think that is the overriding factor. I wanted to see where they draw their business, would they be competitors, given their location, if they were not all C&S banks.

Q. And how did you go about determining that issue? A. First, from analysis of where their customers come from, based upon zip-code data; then, as I mentioned, a refinement of this to street addresses, so that we could draw approximate service areas, market areas of these banks to see where their customers come from. Finally, given the results that we had found about the **[981]** distribution of customers, based on these data, I wanted to determine what caused the banking patterns that emerged.

We found that the customers were quite closely clustered around the offices of the bank. I wanted to see if this was really a matter of convenience, if most people choose a bank based on convenience. One of the things that the questionnaires were directed to was to determine why people chose to bank where they did. Indeed, proximity to home is very important to a majority, about half, as I recall, of the customers.

Then given the fact that there was some scattering of accounts outside the concentrated market area that we had defined, I wanted to determine what factors called for the scattering of accounts. Was it the fact that these banks were out competing beyond the two- or three-mile radius where they draw the bulk of their accounts, or was it something germane to metropolitan-area banking patterns?

The questions were designed to determine that, and, indeed, we concluded that the commutation patterns in the metropolitan

area, and that the desire of many customers, I believe it was about 80%, to use more than one office on a continual basis, more than one C&S office, indicated that where they maintained **[982]** their precise account for customers dealing with a branch, and, effectively, a branch-banking system, wasn't the critical thing. They could maintain an account at one location, bank at many others. People who moved around the metropolitan area often kept their account relationship where it had been.

Perhaps many corporate customers indicated that this was because they had had a relationship with an individual at the bank as they moved around the area and kept their account there where it had been. They were able to continue to transact conveniently by using other C&S offices. This was a conclusion that explained, in effect, why this account spill-over had occurred throughout the area.

Q. Dr. Baxter, in comparing your methodology to that set forth in Dr. Skogstad's two affidavits and referred to in his testimony, how would you characterize his as compared to yours? A. As I understand it, Dr. Skogstad started by looking at where the banks were effectively and saw that the banks involved, defendant banks here, were in various locations in DeKalb and Fulton Counties. He then said, "Can we explain why this broad area would be the market,?" because it is where the banks were located, and he did so by trying to show interactions **[983]** between them through transmission effect, as it was referred to.

I believe that this constituted basic definition of the market, and it was not based on where customers of the individual banks are located, what customers the banks are competing for, which was the thrust of my analysis.

Q. Doesn't the fact that there are or may be other banks not part of the C&S system which intervened between C&S banks, nevertheless, as he says, bring the C&S banks into competition with each other? A. I don't think it brings the C&S banks into competition with each other, because they are deal-

ing—well, first of all, because they are C&S banks, and, second of all, even if they were not, given their locations, because they are going after different customer bases; they are looking for different customer groups by virtue of their location.

Q. What is your response to the government pre-trial brief which asserts that, on the one hand, your economic report contends that Atlanta banking markets are highly localized and each defendant bank is in a separate market, but, on the other hand, your report apepars to state that the only meaningful market for banking that can be defined from an initial investigation **[984]** is the entire standard market statistical area for Atlanta? Can you reconcile these? A. Yes, I think that when one is looking at locally-defined markets, narrow markets, one is asking where these individual banks compete as individuals; and, looking at each bank separately, in terms of the competitive effects of these mergers, when one takes a broader view and looks towards a statistical analysis of competition and looks at structural measures, one then has to broaden the market in order to make reasonable comparisons and look at banking patterns around metropolitan areas; see where people commute from; bring in these types of factors. On this basis, it seems to me to be artificial to take the outlying counties where many have, for example, North Fulton draws business from Cobb County, and Tucker draws some business from Gwinnett County, East Point from Clayton County, it seems artificial to stop at the DeKalb and Fulton County boundaries rather than looking at the broader picture, all of the mergers together. And, indeed, for looking at convenience and needs one needs this broader metropolitan area.

Q. Is this to say then that the entire five-county area is the section of the country to be examined for relative market purposes? **[985]** A. The five-county area can be a section of the country in this case, that's correct. I don't think it tells where the individual banks could compete were they not C&S banks, nor do I think it tells where the competitive impact of each in-

dividual merger, taken separately, could be felt. But it could be a relevant section of the country, based on all these economic factors about the metropolitan area.

Q. How does it relate to the needs of individual groups of customers, the five-county area? A. Well, metropolitan banking customers have banking needs which have developed from their own habits, from where they commute, from where they live and work, from their policies of transacting on many offices at the same time. And, therefore, that area which describes the economic relationships is relevant in those terms.

Q. Do the five individual banks named as defendants herein, the smaller banks compete throughout this entire five-county metropolitan area? A. No, they do not. They compete in their own localized service areas from which their own customers are derived.

Q. Why is there any interrelationship among them all then? A. Well, there's no competitive relationship **[986]** among them, except that they do draw some accounts, what we refer to as spill-over from outside their immediate area, and the spill-over results from these metropolitan banking patterns that I have referred to.

Q. Have you considered the possibility of there being relative markets somewhere in between the very confined areas you described for competitive purposes and the larger area you described for convenience and needs and understanding the circumstances purposes? A. I considered the various intermediate areas, especially those alleged in the complaint and felt that they had little significance, really no significance for competition or for convenience and need purposes, because of the factors I have described.

Q. How would you feel about a combination of DeKalb and Fulton County markets, as it has been asserted by Dr. Skogstad? A. It seems to me to be an artificial place to stop when one talks about banking patterns in the metropolitan area. Of course, far

too broad, as Dr. Skogstad himself admits, when one talks about the areas in which the individual banks compete.

Mr. Hodgson: If Your Honor please, there is one issue somewhat made in the Government's brief that Dr. Baxter's testimony **[987]** is, perhaps you might say, is in elastic fashion, and he may not always be consistent. We think this is irrelevant. Dr. Baxter himself is prepared to show his consistency if he is cross-examined, but we thought we would not go into it on this presentation at all.

Q. Doctor, your report contained a concept known as spill-over, which you used defining markets for various banks involved as defendants, and this seems to have created significant interest in the Government's brief. Would you explain what you mean by "spill-over" as compared to over-lap and other such words in your analysis? A. Well, the concept of over-lap is based really on where primary service areas are, on where the banks draw the bulk of their business from. If two banks are really fighting for the same customer base and competing actively for them, then there is an over-lap in the geographic markets that they serve. In the analysis, as I have pointed out, these five defendant banks are not seeking the same customer base; they are geographically separate. Spill-over results from a scattering of accounts outside of the area where the real concentration is. It is basically customers for whom the bank is not aggressively seeking. It is **[988]** customers who come to the bank because of commutation patterns, perhaps, because they may pass the bank's location on the way to work or shopping, on some regular basis, very often. Because the individual account address reflects a previous condition, a business has moved, it had maintained a good relationship with this banker, it will continue at that location. Although, it will transact at other banking offices, these often—especially where the relationship is due to a tie to a particular individual, these are really accounts that you can't compete for. They are loyal accounts. It is the accounts that are based on geographic proximity that are the ones that you

can compete most effectively for, because they have chosen a bank because of location rather than because of some particular need or loyalty or service that had been performed in the past, or a long-standing customer relationship in the case, especially, of businesses.

Q. What has complementarity got to do with this? And perhaps you can tell us what that word means in your presentation. A. By complementarity, I mean that many individuals who use more than one C&S bank office, branch or five-percent bank, or whatever, do so for varying purposes, not because one competes with the **[989]** other, but because they can make use of multiple offices, make use of the variety of services offered by the different C&S banks, and, especially, the variety of locations with only one account relationship. In that sense, these banks are complementary to each other, rather than substitutes or competitive. If you give an example of a business which moved, say, from downtown Atlanta with a long-standing C&S National relationship, say a borrowing relationship, if it moved out to Sandy Springs, it might not move its account, so it would have a Sandy Springs address with a National bank, on a National bank account, but, yet, it would use the Sandy Springs office all the time to make deposits, to have checks cashed, get funds for its business or whatever.

Q. Dr. Baxter, in the Department's trial brief, it has asserted that you didn't really direct yourself to the matter of competitive interaction among the C&S banks and other banks in the metropolitan area. Did you or did you not direct yourself to this? A. In terms of the banks which intervene between the C&S banks, this was a basic part of my analysis. Since the change in the branching law early last year, there have been many branches opened up in suburban areas. These branches are often between C&S bank **[990]** locations. As such, they intensify competition, and this was part of my analysis.

Also, I spent considerable time having developed a series of exhibits which showed the branching patterns in the Atlanta

area relative to other areas that allow branch banking, and showed the importance in the suburban communities of the branches of the downtown banks, reflecting what I called a rational banking structure or a rationalization of the banking structure.

Q. Do you care to illustrate any of your views from these maps and overlays, which I believe Your Honor may recognize as having been here once before, but which have been brought up-to-date, and I show you the Sandy Springs area marked as it was December 30, 1970. **[991]** A. Well, at that time there were exactly two banks. There was the C&S Bank of Sandy Springs and Trust Company Bank of Sandy Springs.

Q. The green being C&S in every instance and blue being—— A. Other downtown banks.

Q. And a year later from December 31 of 1971, what happened? A. After one year of change in the branching laws, the Roswell Bank, Mr. Eaves' bank, opened an office in north—well,——

Q. North Springs? A. In the North Springs area as did the C&S Bank of East Point, a branch that was opened out of East Point rather than out of Sandy Springs simply in anticipation that the banks would all be one.

National Bank of Georgia opened a branch in Sandy Springs and the Trust Company merged its Sandy Springs five percent bank into the main bank.

Meanwhile, out in the Perimeter Mall area, National Bank of Georgia, First National and Trust Company all opened branches. So, the intensity of the competition——

Q. August 31st of 1971, the following eight months, what had happened? A. Two more Sandy Springs branches, every one is **[992]** now represented there—First National. Every one meaning the five largest downtown banks, First National and Fulton and in the Perimeter Mall area, C&S National, Fulton National

over to the east and Dunwoody Park and Peachtree Bank & Trust opened a Georgetown branch right near this Dunwoody Park branch.

Q. I'm talking about exhibits, Defendants' Exhibit 275, for the court reporter's benefit.

Now, moving to the far opposite end, the South DeKalb area, which is Defendants' Exhibit 274, remember at the end of 1970 it looked like this. I don't know how much detail you want to go into, Dr. Baxter. Feel free. There is no need to go into it all. A. Let me just say that the same pictures emerged. There were more banking offices in this area before the law was changed, but—and, therefore——

Q. Where is Decatur on this map, Dr. Baxter? A. Right in there (indicating).

Q. All right, sir. A. These were the old branches of First National and Fulton that had been established there earlier.

Q. All right. And then, the end of 1971, what has been added? A. Three branches, a C&S Emory branch at Covington-285, and Trust Company and First National **[993]** down in South DeKalb. The First National was a merger of the South DeKalb affiliate and Trust Company.

Q. In the first eight months of this year—— A. C&S Decatur Square, C&S National Decatur Square and C&S South DeKalb, Candler Road—that's not open yet, but that's approved —and, well, Trust Company branch, National Bank of Georgia branch, Peoples Bank of Lithonia, Fulton, same pictures. There were more offices to start with. So, proportionately, there was less intensification than Sandy Springs, but nonetheless very striking.

Q. Finally we have the North DeKalb area, Defendants' Exhibit 273, which is a good bit thicker. Here's the picture December 31st, 1970 just before county-wide branch banking. What does that show you? A. Well, note the independent banks com-

peting alongside with the affiliated banks and again the blue being the non-C&S downtown bank branches and affiliates and then the C&S Banks in green, and the independent banks in orange.

Q. Then, turning, if you will, to the first full year of county-wide branch banking, what happened? A. Well, during this first year, every downtown bank but C&S entered most of these markets in the Perimeter Mall. I believe I have talked about these **[994]** Perimeter Mall offices. They were on the other side of the Sandy Springs map. In Chamblee, First National now has a branch as in Doraville. That was through a merger. Again, the same type of picture on Memorial Drive. Stone Mountain, Mountain Industrial Park area, Trust Company and Fulton, First National of Atlanta.

Here in Toco Hills. In all of the areas where C&S five percent banks had been, there has been an intensification of competition through the liberalization of the branching laws.

Q. Do you count in the area of eighteen blue circles on there, Doctor? Would you count them for me? A. That's correct.

Q. Eighteen. How many green ones? A. None.

Q. Commencing the first eight months of this year, tell us the developments in the North DeKalb area. A. There is one green one, Perimeter Center. I might add, several were applied for and not approved. This one at Hairston Road, there was a hearing held, opposed by the Stone Mountain Bank, Citizens Bank of Georgia. No action yet.

Junior College has been approved, not open. Most action has still been by the other downtown Atlanta banks entering all of these markets.

[995] Q. Doctor, if you will, resume the stand, please.

Doctor, the Government contends in its trial brief that the banking in this area, or however you define it, is highly concentrated and reflects congressional concern with a trend to-

wards concentration. What is your opinion with respect to this? A. The analysis that I have conducted indicates that relative to any bench mark, Atlanta is not highly concentrated nor is the State of Georgia. The trends are very much the opposite. The number of new banks and banking offices have increased substantially in the past decade and this reflects intensification of competition but the level of concentration is much lower than the standard for banking. Banking must be judged against the standard for banking.

Q. Have you studied the Government's exhibits delineating market areas of various defendant banks? A. I have.

Q. In your opinion, are those reasonable representations of the market areas claimed by the Citizens and Southern in their application for these mergers filed way back, indeed, approximately two years ago today? A. That's correct; they are reasonable representations.

Q. Do you have any opinion as to the divergence **[996]** between the market area proposed in those applications and the market areas which you conclude are the relevant ones? A. Well, the explanation, Mr. Hodgson, is that when I attempted to analyze what market was served by the banks, where the competition effect would be felt, I started not from what had been done before by the application, but rather by an analyses of where the business was and what explained the origin of the accounts.

In certain cases the market area is conformed reasonably closely to what I have come up with. In others, particularly the North Fulton area, there are broader market areas in those applications. I think that one of the reasons is that in the two years that have intervened, there has been a substantial compactness created by economic development. When you are talking about a sparsely populated area, you are going to have a broader market area to be served.

When you are talking about a denser area where more banks and branches come in, create new convenience alternatives, perhaps are closer to customers, your market area is going to have to become more compact because of the availability of alternatives. I think that those two factors, the analysis, detailed analysis I did, plus these changes, account for the difference.

Q. What is your view with respect to the theory **[997]** that the amount of competition is determined by the number of competitors in the market and concentration of the number of competitors in that market? A. I don't think that one can say very much about competition in banking by looking only at concentration or numbers of competitors. One can make broad theoretical statements to the effect that, all other things being equal, it's going to make more competition. It's not necessarily the case because the issue depends on how banks compete. They don't compete simply by being there. How aggressive they are in seeking business, what range of services they offer in banking where you have to achieve a certain size to be able to provide modern banking facilities, clearly, if the banking resources of an area is diluted over a very large number of banks, you can't get as competitive an effect as you can if each bank is of significant size and part of the banking system that can do the job.

Q. Do you agree with the Government's contention and its trial brief that these five percenter banks are vigorous significant competitors to C&S National Bank and other affiliated banks? A. I do not believe that they are competitive at all to the C&S National Bank and its affiliates because they are C&S Banks.

[998] Q. Do you believe if these banks, these five banks, were forced to be independent entirely of C&S they could continue to be vigorous competitors in the market place at all? A. I think that they will be much less vigorous competitors than they are today and that they would lose a substantial portion of their

customer base, which was attracted to these banks by virtue of the fact that they are C&S Banks, provide that range of services and have had these past relationships with C&S. I think the customer survey supports the fact that many accounts were attracted to these banks for precisely those reasons.

[999] Q. In several areas of your report, you assume an inevitable disaffiliation of the five banks from C&S if these mergers are enjoined. Did you make these assumptions—this assumption based in any degree upon your interviews with bankers or other persons in your investigations? A. No, I did not.

Q. What was the basis of that assumption then? A. Well, I wanted to consider the possibilities for convenience and needs in light of the only possible assumption that would make these banks potentially competitive with C&S, and that assumption was if the mergers were denied and the relationship of these banks to C&S which has existed were permanently enjoined and the banks were forced to compete. It is only on that type of assumption that the banks could become or would be potential competitors, and under that assumption, I concluded, as the report states, that C&S National and its affiliates and its—close to wholly-owned affiliates would be forced to establish branches in the markets served by these other banks.

Q. And then what would happen to the convenience and needs of the community? A. Well, the customers who had been using these other banks would be—many of them would be at a **[1000]** serious disadvantage, because, as I have indicated, they chose these banks because they could get the range of services and the complementarity of services that C&S provided.

Q. Assuming for the purpose of giving me an answer that the geographic market areas, the several ones proposed by Dr. Skogstad, DeKalb County, North Fulton County, DeKalb, Fulton, Atlanta, as the case is in the complaint, which are identical, as a matter of fact, to those alleged the complaint; assume you accept those as relevant, would that alter your determination

with respect to the competitive effects of these mergers? A. No, it would not.

Q. Why not? A. Because these banks are C&S banks and compete as such. They offer the same range of C&S services, and, whatever market area one assumes, the inevitable conclusion about the competitive effects is not altered.

Q. Are you generally familiar with services offered by correspondent banks around the country? A. I am.

Q. And you have heard the testimony of various witnesses here, including Dave Padgett and Bill Farr and Herb Megar and the others in this case? **[1001]** A. I have.

Q. Do you agree with them that the correspondent services offered by the banks those three gentlemen represent are typical of correspondent services offered by major, big-city banks? A. I do.

Q. How would you distinguish those packages of services from those which the C&S offers and which are relied upon by these five percenters? A. These are much—I might say these are much the same type of services that C&S offers to its normal correspondents, but, when it comes to the five-percent banks, as we have heard, placed on top of the support services is a management involvement of providing personnel, managing the managers, auditing, controlled performance, evaluation, as well as identification, as being part of C&S and reaping the benefits of C&S system in that light. So, these really are C&S banks as opposed to banks that are buying support services from C&S.

Q. Now, if you took away those aspects of the services which are unique in this case, as distinguished from the regular correspondent relationship, over and above it, what would do to the capacity of these banks to compete in the market? **[1002]** A. They would be much less effective, because of all of the things that their customers had been relying on.

Q. Would the fact that they had always relied upon these services have anything to do with your opinion? A. Well, it would be critical because independent banks are—there's a role for independent banks in suburban communities, probably less so than there is in the free-standing small towns, but clearly the independent banks that have been there a long time and had appealed to a certain segment of customers and had grown up with these customers have no trouble competing and surviving. But banks that were born into C&S and went after a customer base that was looking for this complementarity and looking for the type of services that branch banks offer, and many larger customers that were really C&S customers, clearly, if these banks suddenly woke up and found themselves independent, their customers would—many of them would look elsewhere.

Mr. Hodgson: That's all, Your Honor.

Mr. Sims: Your Honor, we really didn't expect quite as extensive testimony from Dr. Baxter on the stand. I wonder if we might have about a fifteen-minute recess before we **[1003]** start our cross.

The Court: All right.

[1004] **Cross-Examination**

By Mr. Sims

Q. Mr. Baxter, I assume you can see that I am wearing a tie with some local identification here. Are you familiar with these ties? A. I've seen them in the courtroom yesterday and before.

Q. Are you aware of who passes out these ties or who wears these ties in and around Atlanta? A. Yes.

Q. Who would that be? A. C&S people and their friends.

Q. Well, if I was walking down the street of Atlanta and somebody saw me wearing one of these ties, do you think he

would assume that I was either a C&S man or a friend? A. I think so. I think he would think you have money to lend. He might go after you for a loan.

Q. It shows you how impressions can be deceiving, I suppose.

Dr. Baxter, I have been a little confused by a couple of portions of your report. But, there is one passage that completely escapes me. I wonder if I could get you to explain it for me. If you've got a copy of Volume I, the narrative, if you'll look on page 125 of **[1005]** that, the first paragraph there, fifth line down, most customers cannot recognize the distinction between the correspondent associate and any branches of C&S National, although larger customers may be aware of the legal distinction. It's in no sense apparent to them operationally, yet these observations are entirely consistent with the fact that many customers view the correspondent associate as independent entities.

I must admit I don't understand that. Can you explain that to me? A. Yes. The types of questions that elicited this response, and these conclusions were as follows: Do you view these banks as C&S Banks? The answer was overwhelmingly, yes.

Do they behave? Do you get services from them as though they were branches of the C&S National?

Can you recognize any distinction in the way they operate, in what sort of services they have to offer to the public, and who is managing them, and so on.

And the answer was, no.

Yet, many customers indicated that these banks have a local identity that they try to orient their approach as to the particular market they serve. This is precisely the same sort of thing that I found in interviews in the areas served by C&S branches where we talked to **[1006]** some people in the Buckhead area

and in the South Moreland Avenue office area. And answer was, "Well, these people have a sense of community." You don't have the problem you often get in branch banking of a fellow coming from another part of the city or, in the extreme, out of the state and not being able to tailor the services he is offering to the particular needs of that community. **[1007]** A. I think C&S branch people are conscious of being able to do that, to identify with what their customers need and that the five-percent people, five-percent bank people have the same interest, appealing to what Chamblee customers need in Chamblee and identifying with them and learning what they can do for them.

Q. Okay. Let's look at Chart No. 67, if we could, in your exhibit, and if I read that correctly, are you with me? A. Yes, sir.

Q. If I read that correctly, about 52% of the commercial customers responding to your survey thought the correspondent associates and other banks you had listed here, I guess the subsidiaries, were local banks with independent identities, and about 48% or maybe 49% thought that whatever relationship there was between C&S and those banks was not important; is that correct? A. The second part of your sentence, of your question escapes me.

Q. 52%, as I read this chart, 52% of the responders thought that the correspondent associates were local banks with independent identities; is that right? A. Right.

Q. And 48, almost 49% of the commercial customers **[1008]** responding thought that whatever relationship there was between C&S and those banks was not important? A. Right.

Q. Okay. Let's look at No. 60, if we can. Now, 60 is the same chart for individual as opposed to commercial accounts, I believe. Now, on No. 60, as I read the chart, about 61%, slightly less, thought that the relationship was important for various reasons? A. Right.

Q. But about 43% still thought that these banks were local, independent banks; is that right? A. Right.

Q. Okay. Let's try looking at the letter now that elicited those responses. One, as an example, let's use Exhibit 43, that is titled "Survey Questionnaire Sent to Commercial Customers of C&S Affiliates and Correspondent Associates". The particular example we have here is the Chamblee Bank. A. I am with you, sir.

Q. Do you know how many times the name Citizens & Southern or the initials C&S appear in that letter? A. The letter covering it?

Q. The letter and the questionnaire. A. In the letter, it just goes on the letterhead, which is the normal letterhead used **[1009]** by the Chamblee Bank. In the questionnaire it appears a number of times, yes.

Q. Would fifteen sound right to you? A. I haven't counted; I assume that's correct, if you say so.

Q. Okay. Now, let's look on Page 3 of Exhibit 43. We are into the questionnaire. Do you find the sentence marked No. 5 in the middle of that page? A. Yes.

Q. Could you read that sentence for me, please. A. "Please check which of the following banking services you use regularly for your business at some C&S banking office or offices, other than the C&S Bank of Chamblee in the Atlanta area."

Q. Okay. Now, let's go down to No. 6, right below that list there. Could you read that sentence for me, please. A. "In terms of meeting the total banking needs of your business, do you consider the relationship that the C&S Bank of Chamblee has with the C&S National Bank and its affiliates in the Atlanta area as being important? Not important? If important, tell us why."

Q. Now, the very next question on that—in that survey on the next page is the question dealing with whether they

consider the bank independent or just like [1010] any other branch; is that right? A. Right.

Q. Now, despite the language you just read, let me ask you first, would you agree that the language in Sentence No. 5 and Sentence No. 6 suggests the existence of some kind of relationship with C&S National Bank? A. Well, it suggests—6 suggests some kind of relationship, but certainly less so than the name of the bank does.

Q. And 5, where it talks at some C&S banking office, other than the C&S Bank of Chamblee, would that suggest some kind of relationship? A. It suggests that C&S has other offices that are called C&S.

Q. Other than the Bank of Chamblee? A. Yes, that is has such offices, but not necessarily that they are used.

Q. All right. Now, despite the language in those sentences, despite the fact that the name Citizens & Southern or C&S appeared fifteen times in the letter, in the questionnaire, despite the publicity that you heard referred to earlier in the trial in terms of newspaper ads and notices sent out to customers, so on and so forth, concerning this trial, and despite all the testimony that we have heard about the correspondent [1011] associates being operated just like branches of C&S National, despite all of this, in Exhbit 67, the commercial customers, the ones you would assume would be more knowledgeable, I take it, over 50% of the responses, on the average, from those customers indicated that the bank they were talking about was an independent bank; is that correct? [1012] A. The bank which appears or competes with a local identity, independent bank with local identity—underline that—which really works to say that the C&S bankers there can differentiate their approach to particular markets, to half of them, approximately the same half that said that the C&S, the same number, not necessarily the same people, that said the C&S relationship was not important to them. You

wouldn't expect that this would be important to all customers. Half is a rather substantial number.

Q. Now, on page 123 of your narrative, Exhibit 1, you state, and I quote, "Because the correspondent associates are managed as C&S Banks, they are identified as such in the minds of the customers. Most of their customers look at these banks as C&S branches through which to avail themselves of the advantages of the entire C&S organization."

Now, considering the numbers we have just seen on your charts 60 and 67, isn't that statement a little exaggerated? A. I don't think so. I think that the interview resolves, talking to people about this, the vast majority of the people we talked to made this statement and also said, but they do orient their approach to the particular needs of this local area.

[1013] Q. The vast majority of the people you talked to? A. That's right.

Q. That's different than the people who you mailed these questionnaires to? A. No, I think it's a representative. I think that both are representative cross-sections. When you talk to people and explain precisely the ramifications of some of the things you are asking, some of them may say, for example, they look at this particular market they are serving and they serve it locally. They really recognize what the local needs are. If you follow up with a question, well, if they are still C&S Banks, you may very well get the answer, yes, without any inconsistencies at all.

Q. Don't the surveys, aren't the survey results equally—couldn't they support equally the conclusion that people understand there's some kind of relationship between C&S National and the correspondent associates, that at the same time the correspondent associate is in fact a separate, independent bank? Wouldn't those statistics we are talking about support that conclusion just as much as the one I have just quoted from you on page 123? A. Absent interview results and having discussed this,

yes, they could support it for half of the customers. Perhaps the same half who would choose to bank independent banks, perhaps not.

[1014] Q. Now, let's look at some of your other charts, if we could, Exhibit 1 in Volume II of your report, headed, "The Relative Size of the Largest Commercial Banking Organizations by State." A. Yes, sir.

Q. Could you explain the significance of this chart, please? A. This is really a background exhibit designed to show what has happened to concentration in the United States as a whole. How large a share of the market, the largest bank has in most states in the country.

Q. Now, I think you have broken down Exhibit 1 into three areas titled, "State-wide Branching, Limited Area Branching and Unit Banking"; is that correct? A. Yes. Yes.

Q. Now, Georgia is listed in the limited area branching state. If I read the chart correctly, the largest bank or bank group is noted as having 19.95, about twenty percent of the commercial bank deposits in the state; is that right? A. Right.

Q. Do you know what bank group that is? A. C&S.

Q. Isn't it true that C&S has a larger share of Georgia deposits than the leading banking organizations in **[1015]** five of the states you listed in a state-wide branching part of that exhibit? A. That appears to be.

The Court: You mean 19.95 is greater than the percentage shown in the first column on the first page?

Mr. Sims: That's right.

The Court: We can get that.

Mr. Sims: All right, Your Honor, I'm trying to build up to a point slowly. I will try to go a little quicker.

By Mr. Sims

Q. On page 28 of your report, you noted that the Georgia —— A. The text.

Q. The text; I'm sorry, yes. You noted that the Georgia concentration was higher than the averages in limited branching states as a whole. In fact, it's considerably higher than the average, isn't it, about thirty percent higher? A. Yes, sir.

Q. And, in fact, you explained that, and here I'm quoting, many of these states permit less branching and holding company activities than does Georgia; is that correct? **[1016]** A. Yes.

Q. How much holding company activity does Georgia permit? A. At the present time, holding company acquisitions are limited to five percent.

Q. How many of these states in your limited area branching list allow, just to pick, one state wide holding company activity? A. I can go down the list. Alabama has an emerging holding company. Indiana does not. Kentucky does not. Louisiana, I think, is still one banking holding company. Massachusetts does. Michigan is developing theirs. Mississippi does not. New Hampshire, I'm not sure. New Jersey does have wide spread. A couple starting in New Mexico; very wide spread in New York, Ohio; Pennsylvania does not.

Tennessee and Wisconsin do. More than half have.

Q. So, ten of the states in that list do permit state-wide holding company activity? A. If that's what you counted. I believe I am correct on that.

Q. You're right on those. Do you still stick by your statement on page 28 that many of these states permit less holding company activity than does Georgia? You **[1017]** explained that Georgia was relatively unconcentrated by pointing out, by comparing it with all these states and tried to explain away its relatively high concentration among limited branching

states, by pointing out that holding company activity is less allowed in other states than in Georgia. In fact, there is more holding company activity allowed in ten of these states; is there not? A. Well, in New Jersey, New York, except for the Midland, this has all been in the last few years. The concentration figures in 1970 reflected this thing developing. Georgia's holding company growth occurred before 1956, so that's the major difference. It's happening in these other states. I think that the figures will reflect it in five years.

Q. In fact, in any of your charts in here, trying to compare Georgia with the other states, Atlanta with the other SMSA, did you take into account at all the fact, the ability of banks to operate through holding companies? A. Well, on some of these, yes, others not. It depends on what comparison you're able to make. You will have to be specific in your question.

Q. Okay. Let me try to run them down. How about Chart No. 2; did you take it into account there? A. That's based upon banking organization, largest **[1018]** banking organization, holding companies will be included, yes.

Q. But, in terms of comparing Atlanta with these other SMSA's, you don't find any difficulty in comparing Atlanta with SMSA, which allows state-wide branching or state-wide holding company activity? A. This is only limited area branching. If the question is, are all limited area branching states the same and are all holding company developments the same, can you make precise comparisons, one against the other, without taking into account the specific laws, I would say, of course, not. If you are going to compare Atlanta with Kalamazoo, you have to know something about Atlanta and Kalamazoo, which is one of the criticisms I levied at the structural measure from the start.

But, if you are comparing our SMSA in the United States and you are trying to get a ranking and you are trying to see what creates a competitive norm, and you come out with At-

lanta ranking very close to the bottom, then the question is should it be five notches higher or lower? My answer is, of course, it can be five notches higher or lower at a point.

[1019] Q. Well, I don't want to belabor this point, but you rank Atlanta in this chart No. 70. If I read it correctly, and by my calculations, of the 69 states or higher SMSA's, 47 of those are located in states which allow statewide holding activity. Now, since you did not compare it with SMSA's in states which allow statewide branching, I am unclear as to why you didn't take into consideration statewide holding activity. A. Well, first of all, virtually one can divide these states by that category, that is true. But, in most cases, the holding companies operate in different markets around the state rather than having that many affiliations in the specific standard metropolitan statistical area, and these do have this most limited area branching states. You can branch throughout the metropolitan area, and so it is essentially equivalent to statewide branching states where one looks at metropolitan areas. It is only in a statewide concentration basis that you are going to get a different result.

Q. All right. I won't spend too much more time on these charts. Just look at No. 5 for one minute, if you would, and No. 5 is a comparison of SMSA's in states where unit banking is prevalent. I take it there you did not take into consideration statewide **[1020]** holding company activity either? A. Yes, because it's banks or bank groups, percentage held by largest banks or bank groups.

Q. But, in terms of ranking, that wasn't a factor in your decision? A. Well, this is the way it was ranked. It was ranked by the percentages held by banks or bank groups.

Q. Are you likely to find a higher concentration in states which have statewide branching as opposed to states which have unit banking? A. You will find higher concentration on a statewide basis, that is correct.

Q. All right. A. But, in local markets such as metropolitan areas, you need not find higher concentration at all.

Q. Would that statement still be true if, in fact, the unit-banking states allowed statewide holding company activity? A. It would not—there are many unit banking—there are several unit-banking states that, when holding companies are accounted for, you get very high concentration. Minnesota is one example; Montana is another.

Q. Do you believe the state is an appropriate section of the country or a relevant market in this case? **[1021]** A. I most certainly do not.

Q. Are you asserting now, based on your direct testimony, that the SMSA, Atlanta SMSA, is an appropriate section of the country or a relevant market? A. For convenience and needs aspects, it is an appropriate section of the country to look at the structural considerations.

Q. How about for determining the competitive effect of the merger? A. I think you have to look the way the competitive impact of each of these banks is separately.

Q. Okay. If we can talk a little bit about the phenomenon you call market spill-over. On Page 59 of your report, you give an example of market spill-over. I am quoting here from the last line on the page, going on to the next page: "A spill-over effect typically occurs when the location of a customer as identified by the zip code of his address on the bank's records is an inaccurate indicator of where it is convenient for him to conduct banking business."

Then, on Page 60, a little later down here, you state that: "These spill-over effects have no significance for competition, either actual or potential." Some of these questions may not sound—may sound a little simple, but I am confused by this. Do you mean **[1022]** that such customers are in no market at all? A. No, I don't mean that. I mean when you look at the market, this is why the metropolitan area, as such, comes into

play and has to be examined. I mean that when you look at where a bank is going out and is aggressively seeking its business, the area it serves, you have to look at where the concentration of where its accounts are. It may have a scattering throughout the metropolitan area that appear there for all sorts of reasons. One of them is because of this complementarity aspect that I discussed. Another is because that these customers may have moved around the area. Another may be a partciular tie to an individual officer. Many of these result from the C&S relationship. Others of them result from simply metropolitan banking patterns, but it is not where the base of business is being conducted by this bank.

Q. Could these spill-over effects result from different prices offered by different banking institutions? A. Let me see if I understand your question before I answer yes or no.

Q. Okay. A. You were saying, are there certain customers who may be attracted to a particular bank and willing **[1023]** to travel a great distance because of price——

Q. No, we are not on the same wavelength. We are not on the same wavelength. A. That's why I wanted you to explain it.

Q. Could this, what you call spill-over, account, the scatteration of accounts, could this result in the Atlanta area in any place that you find it as a result of competition on the basis of price, quality of service, between banking organizations? A. I don't understand why it would result from that. I believe I have explained why I think it results.

Q. Let me see if I understand you correctly. Are you saying——

The Court: Well, if you will, go back one step, will you.

You say a spill-over effect typically occurs when a location of a customer as identified by the zip code or his address on the bank's record is an inaccurate indicator of where it is convenient for him to conduct his banking business.

Now, I had assumed that the address would be—would be their home address.

A. Often, but not always, Your Honor. There are a substantial number of addresses that are business **[1024]** addresses, and yet they may bank where they live.

The Court: Well, but when you consider the bank's forms, what does that typically call for?

A. I believe that—I would have to check this, but I believe that the bank often asks for both addresses, but the accounts are sometimes mailed to business address and sometimes mailed to home addresses, and it is the mailing address that is on the computer.

The Court: On the bank statement.

A. On the bank statement.

The Court: Well, now that would be an indication of where it is convenient for somebody to do his paperwork, his reconciling his bank statement, wouldn't it? A. That's correct, that's correct.

The Court: Somebody who may have considerable office time could do it at the office, but if he worked for a large corporation where his time was accounted for, he would hardly ever have his bank statement sent there, would he?

A. That's correct. I would say the vast majority is sent to home, but certainly there could be a substantial number that appeared to be banking at a **[1025]** distance from home, because they think——

The Court: And he has the bank statement sent elsewhere?

A. That's correct.

The Court: I was thinking in terms of a bank such as Park National. Now, I would assume that with a bank like that, that the great majority of the customers of the bank bank there be-

cause of business, convenience to their business location, rather than their home location?

A. I think that's certainly for the business location; for the business customers, it would be sent to the business anyway. The corporate customers, in large part, and it would be the business address that the statements would be sent to, and that would appear in the zip-code analysis.

The Court: Why would that be the case? Why would they be sent to the business address?

A. I think most business customers, most firms do have the business accounts sent to the business.

The Court: Oh, I can understand if it is a business account, but as to the employees, who is the individual person who banks at **[1026]** Park National, is there any reason that they would have their address given as somewhere in Executive Park rather than their home address?

A. Some might, if they bank near where they work, and they want their statement sent there. Others might have it sent home.

The Court: But would someone who lived in North DeKalb and banked at Park National, because of the convenience of a business address, be a spill-over customer in your definition?

A. If he lived in North DeKalb and banked at Park National because it was convenient to business, it could be a spill-over customer, yes.

The Court: Well, wouldn't he invariably be a spill-over customer in your definition?

A. Yes, yes, if he lived far enough away.

The Court: If he didn't live in what would be the area of where Park National was, the convenient office as far as his home location was concerned, then he would be a spill-over customer every time?

A. Yes, that's correct.

[1027] The Court: Under your definition.

A. That's correct.

The Court: Now, would you go ahead? I think I understand this man.

By Mr. Sims

Q. Okay. The point I was trying to get at, is it possible, in your mind, that this kind of a scatteration of accounts could result from something other than convenience, if you indicate here? Could it result from competition among banks? A. To some customers it could, although some customers have a definite preference for banking either where they work or where they live, and the two are not really substantive.

Q. Okay. Following up, if I understand what you just stated to the judge, if a person lives in Chamblee and receives his bank statement in Chamblee and banks downtown, he would be a spill-over effect, right? A. Outside of the service area of the downtown bank, yes.

Q. Is he competitively insignificant to Chamblee banks? A. He most likely is, because he wants to bank where he works, and banking where he lives is not a real alternative.

[1028] Q. You assume that from the fact that he banks downtown and no other facts? A. I assume that from the fact that he banks downtown, together with a lot of work which has been done in the area of why people bank where they do, and pretty consistent proportions turn up. Twenty-five or thirty percent of people bank on the way to work cycle. This is sort of a generally—it comes up in various surveys and has been confirmed, generally confirmed result. People want to bank where they work.

Q. Then, I assume that you would think that Chamblee banks don't care where he banks; they have no interest in him. Is that what you mean by competitively insignificant to Chamblee banks? A. I would not state it as strongly as you did. I would

say that Chamblee banks would better spend their resources going after the people who are in their immediate area who want to bank there.

Q. Do you further assume that this particular customer would not consider Chamblee banks if his downtown bank treats him badly and he decides to leave? A. Some might. Most would want to bank downtown and would look elsewhere downtown.

Q. Do you know how many customers C&S National, let's take as an example, has whose addresses, their **[1029]** statement addresses, are in DeKalb County? A. I don't have a figure at hand. I am sure it is substantial.

Q. Does 15,000 sound correct to you? A. I really don't know.

Q. In any event, these customers would all be spill-over effect as far as DeKalb County is concerned? A. Some of them who would be large customers and who may have had long-term C&S National relationships would not really be spill-over effects; for larger customers, C&S National certainly serves the entire metropolitan area and beyond. Others may actually be banking at C&S affiliates in DeKalb County and never bother to move their account from the National Bank. So they may appear on the National Bank's records and they may never go into the National Bank because of these complementarities that I refer to.

Q. Now, in your report, I think on Page 88 and 89, you say that spill-over, such spill-over as you have been talking about, appears to be substantially more prevalent at branch-banking systems than among local independent, suburban banks.

Is this a general conclusion, or is it relevant merely to the Atlanta area? **[1030]** A. I think it's a general conclusion in the metropolitan area based on banking patterns in the metropolitan area.

Q. Have you done any previous studies in other metropolitan areas that support that conclusion? A. I've not done surveys of the sort I have done specifically here. But, I've worked with branch banking organizations and with independent unit banks and I think that the distribution of their accounts reflects this general conclusion. Most definitely it does.

The Court: Let me get a question in here. You indicated earlier that the primary competition would be in the area of, as I understood it, geographical convenience where you put a branch here in order to compete for the customer in that area. And then, I got the idea that you said that apart from that, then there was a certain insulation from competition because they are banking for other than convenience reasons which would indicate that competition wasn't really effective; is that in any way a statement of what you said?

The Witness: Yes, for certain customers who may be dealing with a particular office. They are the hardest customers to get away from the bank.

The Court: What I wanted to find out was **[1031]** whether you were identifying that type of customer with the spill-over customer or complimentary customer, or simply a unique individual.

The Witness: Well, he may be reflected in the spill-over data.

The Court: But, it's not coincidental?

The Witness: There are other types of spill-over customers than the type who were loyal to particular offices and one of the types who haven't, who have moved their location and haven't moved their accounts. What I am saying is, there are a number of reasons that there is a scattering of accounts around away from the primary service area. I'm trying to elaborate on some of these reasons for it.

By Mr. Sims

Q. Dr. Baxter, can you cite me to any professional journal or book by a recognized economist which describes or utilizes the concept of translating over-lapping into spill-over such as you have done? A. I'm not aware of any.

Q. Can you cite me to any such journal or book in which the word spill-over is used in the context you have used it? A. I'm not sure that I can.

Q. Now, on page 60, 60 and 61, you attempt to **[1032]** distinguish spill-over from over-lapping. Market overlapping implies over-lap of identifiable geographic markets, thus the two banks draw part of their customers——

A. Excuse me; I want to find out where you are.

Q. Down at the bottom of page 60. A. Market over-lap implies——

Q. ——implies over-lap of identifiable geographic markets. Thus, the two banks draw part of their customer base from the same area. A. Primary customer base.

Q. Primary customer. Market spill-over on the other hand tends to be widely scattered outside any such definable market area. Does this mean you must determine a market before you can find spill-over, or do you first determine spill-over and then determine the market? A. I think you look and see where your customers come from, and you see a concentration of customers in a particular area. And when you see that your customer base thins out, the accounts become much more scattered, that is what we refer to as spill-over.

Q. Okay. Now, on page 8—I don't think you need to look at this, I'm not going to quote you—states that no reasonable expansion of defined geographic market can significantly reduce much less eliminate the number of accounts from these outside markets. **[1033]** A. Right.

Q. Would two-thirds reduction be significant to you? A. Yes, but I'm not sure that one can have a reasonable expansion. If

the accounts become so thin outside of the primary service area, then this is not your market.

Q. I'm going to get to that. Are you aware that for all banking offices located in DeKalb County, approximately ninety to ninety-two percent of their small accounts come from within DeKalb County? A. That's about correct. I'm aware of a similar figure to that; yes.

Q. Then, I assume that since that would indicate two-thirds reduction in the amount of spill-over, you would note DeKalb to be a reasonable expansion of the defined geographic market? A. That's correct, because you are getting a scattering of accounts when you get more than a couple of miles typically away from these offices. So, you are going after that sort of business in a very different way. It's coming to you for different reasons than proximity.

The Court: Why do you say that, Dr. Baxter? Because, it seems to me even home-to-business travel, if the bank is located at some point along that line, **[1034]** he can be coming to that bank because of proximity, maybe proximity to the automobile's line of travel?

The Witness: Oh, yes, indeed. That was in fact one of the alternatives that appeared on the questionnaire. There was a significant portion of people who banked because it was on the way to work. In fact, the market areas typically extend away from the center city, from the location of a bank, indicating people pass the bank on the way to work and tend to bank there. That's clearly the case.

But, I feel, I think what I was pointing out was when you get accounts totally scattered without any concentration of accounts from the extremities in the metropolitan area, then these accounts occur for reasons other than convenience because there are more banks that are convenient. This is—if there are other alternatives that are more convenient, then they can't be choosing this particular bank based on convenience factors.

By Mr. Sims

Q. Could they be choosing it based on the fact it does business better for them than the other banks that are more convenient, offers them lower price, offers them better service? A. They could.

[1035] Q. Doctor, how do you define a banking market? This is a broad definition. How would you define one? A. I would define the banking market in terms of the area in which banks seek out their customers and which customers find these banks relevant alternatives or reasonable alternatives.

Q. Did you testify for the defense in the *Phillipsberg* Bank case? A. Yes.

Q. Do you recall it? A. Yes.

Q. Let me show you—this is the appendix, Supreme Court appendix. See if you recognize this particular paragraph on page 507, where I believe Mr. Weinberg asked you the same question I just asked. A. I look at a banking market just as I look at any other market—do you want me to read this?

Q. Yes. A. ——as an integrated area where there are buyers and sellers and where the operation of the buyers and sellers determine the quantity of sales and the price in that market, and the people in this market are all interacting to effect the price and people outside the market are not significant factors or products outside the market. I believe you can define a market in a reasonable sense only in **[1036]** terms of a specific product that is sold.

Q. Now, does that say the same thing as you look, I think you just said you looked at where the banks get their business? A. Where they are inter-acting, yes.

Q. That's what you mean by where they are inter-acting, where they get their business? A. Yes.

Q. Would you agree that the market in which a customer buys includes the sellers that the customer could reasonably have chosen or reasonably choose as well as the bank he did in fact choose? A. Yes.

Q. Dr. Baxter, did you have anything to do with the preparation for the application for the mergers which are the subject of this litigation? A. No.

Q. Have you ever assisted in the preparation of bank merger applications? A. Holding company acquisitions.

Q. Holding company acquisitions. Holding company acquisitions is fine. Are you familiar with the regulatory aspects of the prime service area? A. Yes.

Q. Are you aware of how that's defined by the FDIC? **[1037]** A. Most defined in terms of seventy-five percent. The language has been changed in the national banks. I'm not sure of the FDIC.

Q. Seventy-five percent of what? A. Of the business where you get your deposits.

Q. Where you get seventy-five percent of your deposits. In complying with the instructions in all bank merger applications, to delineate the primary service area for a particular bank, is there any consideration given to other customers of area banks? A. You will look at where the bank involved derives seventy-five percent of their business. You are also asked to indicate who are your competitors in another section.

Q. To determine what the primary service area would be of a bank, do you give consideration to other banks in determining primary service areas of one of the parties of the merger? A. No, you do not.

Q. Do you give any consideration to the location of other banks? A. No.

Q. Is it correct to conclude, then, that a determination of primary service area of a bank is not necessarily a determination of the banking market in which **[1038]** that bank competes? That the primary service area and market are not synonomous? A. They are not necessarily synonomous.

Q. Isn't it true you use these terms as if they are synonomous in your report? A. No, it's not. I'm saying, in determining the competitive effect of a merger involving essentially suburban banks, one has to look where the service areas are to see if there's any significant over-lap between them. That's how I would determine a competitive effect.

Q. Look at page 19 of your report, Doctor, the second paragraph. You begin to tell us how you undertook to define the geographic service areas. If I might read that, "The second study involved the definition of the geographic service areas of the C&S affiliates and correspondent associates in Fulton and DeKalb Counties and the determination of the degree, if any, of geographic market over-lap among these banks. It thus addresses directly the issue of the markets in which actual and potential competitive effects are to be determined."

Then, over on page 20, up at the top, in the first sentence, "However, for a variety of reasons, zip code area definitions do not adequately describe bank service areas. Thus, for a number of zip code areas samples of accounts were analyzed by street address in order **[1039]** to test further for geographic market over-lap."

Aren't the terms service areas and over-lap used relatively synonomously in that language? A. No, I don't think so. What I'm saying is that we are looking at the area, market area served by an individual bank and the market area served by another bank to see whether or not they are drawing, they are addressing themselves to the same customer base. This is the service area and the area of market over-lap, if any.

Q. In determining those markets, did you pay any attention at all to the customers of other banks other than the banks, the C&S Banks that you were drawing markets for? A. There were other banks who drew customers from these areas.

Q. But, did that have anything to do with drawing the market for, say, Park National? A. No.

Q. Did location of other banks have anything to do with drawing that market? A. No, because you would consider the location of the other banks when you're asking whether or not Park National, which other banks Park National is competing with. In the *Phillipsberg* case, if I may go back to that, the question was which banks were Phillipsberg National **[1040]** and Second National competing with. So, you had to look at their customers as well as the customers of the two banks involved in that case. In this situation you are not asking who these other banks are competing with. I wasn't asking that question. I was asking whether these two banks compete with each other and, therefore, I looked at the areas that they served.

In the *Phillipsberg* case, there was no question but that those two banks competed with each other. They were right across the street. Therefore, the question was who else do they compete with? Who else is an alternative to the customers that they serve?

[1041] Q. So, in your mind, in terms of determining the market areas for the defendant banks, it was irrelevant who else they competed with other than the other defendants? A. In looking at the market areas alone in this case, that is correct.

Q. Isn't it true, then, that what you describe as markets in your report are, in fact, something less than primary service areas, as would be defined by the regulatory authorities? A. In which to judge the competitive impact of two banks located apart from each other. That is what these markets—that is what these markets were based on, what areas they served.

Q. Well, now, if we could, according to your Exhibit 35, which I think is the big exhibit that gives all the market areas for all the defendant banks, according to these exhibits, they run 35A through H? A. Right.

Q. Zip code 30345 is in the market served by Emory, Park National and Tucker, but not in the market served by Chamblee? A. Right.

Q. Is that correct? A. 30345, I will have to check that. Emory, **[1042]** Park National and Tucker.

Q. But not in Chamblee? A. That's correct.

Q. Are you aware that the Buford Highway office of C&S Chamblee draws some 8% of its small demand-deposit accounts from Zip Code 30345? A. 8% of its——

Q. Of its. A. Of the office accounts?

Q. That's right. A. That is possible.

Q. Would you agree, then, if that was, in fact, a fact that this banking office is a supplier of banking services in a market that includes at least part of 30345? A. Not substantial, though, because we are talking about one branch having 8% of its total deposits. You have to draw a cut-off somewhere.

Q. Substantial or not, it is a supplier, isn't it? A. To an extent, yes. I imagine it has some Florida accounts, too.

Q. Now, if I am not mistaken, the boundary that you drew between the market which you delineated for Emory, on the one hand, and Park National, on the other **[1043]** hand, in 30345 runs through an area called Sagamore Hills, which I understand is a neighborhood just northeast of Clairmont Road, between Briarcliff and La Vista. A. Well, I will have to check.

Q. Would you check that and see if that is accurate? A. I will have to check and see where we are. 30345?

Q. Right. Now, I think you gave, on Page 86, I believe, you told how to draw that line, and as I followed it through a map, came out between Emory and Park National, and roughly parallel to La Vista and Briarcliff Roads. But, I think that would run through that Sagamore Hills neighborhood, I believe. A. Well, I would have to—I would have to check that on a map.

Q. Well, that is not terriby important. It runs through, approximately, the middle or it is between La Vista and Briarcliff Road, so it runs through whatever neighborhood is between La Vista and Briarcliff Road; correct? A. Okay.

Q. If a resident of this area is banking, say, with Park National and should become dissatisfied with the treatment he was getting at Park National, would you **[1044]** expect he would be able to find equally convenient alternate sources of banking services? A. He might be able to, yes.

Q. What banking offices, or do you know what banking offices such a customer would be likely to have as a convenient alternative, if you can use your map over here. A. I would have to check the map.

Q. You can use this one over here; it is a big map. A. All right, I will accept your invitation.

Q. Okay. A. It should have the locations of the banks.

Q. Let's see if we can locate this area. Now, Briarcliff Road is here; correct? A. Right.

Q. La Vista Road is here? A. Correct.

Q. Clairmont Road is here. So, we are talking about somebody right in here. A. Okay.

Q. Now, where would he be able to go if he got dissatisfied with Park National? A. Okay, Park National is here.

Q. Right. **[1045]** A. All right. He has about as close as Park National or closer a branch of the Fulton, of the Trust

Company, of the First DeKalb County Bank. Well, he really has two branches of the DeKalb County Bank, Peachtree; I am just trying to draw a rough circle with this.

Q. That is okay, that is fine. A. He has a bank of the National Bank of Georgia branch, of the Trust Company; he has a Northlake branch of Fulton not yet opened. He has a branch of Tucker.

Q. C&S Tucker? A. Yes. And he has a branch of Trust Company at Northlake. I think that that is—I think that these are within a comparable distance.

Q. Now, where is Toco Hills on this map? A. Where is Toco Hills? Somewhere in here, isn't it?

Q. Is that right? A. There it is.

Q. Would Toco Hills be convenient for him, as well? A. About the same distance as Park National, I thought.

Q. And there is an Emory bank and a Trust Company bank and a First National bank, is there; is that right? **[1046]** A. There is an Emory bank; there is a First National. Trust Company is a little bit away, and so is Peoples American, I guess now called First Georgia.

Q. Okay. Thank you, thank you, Doctor. A. May I make a comment on this?

Q. Certainly. A. It seems like a lot of banking alternatives available to him.

Q. Is that your comment? A. A lot of competition.

Q. In fact, customers anywhere in the area between Briarcliff and La Vista would have convenient access obviously to many more than one source of banking services; is that correct? A. Oh, yes, definitely.

Q. Now, if you could turn to 85-86 in your report, where you describe how to delineate the lines between these markets. If you

can use your other book and look at Exhibit 40, if you would. Now, Exhibit 40 lists the zip-code areas where you had more than one of the defendant banks drawing some substantial amount of business, and between which you wanted to attempt to draw lines in order to delineate markets. On Page 2, let's see, Pages 3 and 4, you note that there are six pairs of C&S banks which you tried, or attempted to draw market lines between. That would be Chamblee and **[1047]** Park National. A. Now, what, what zip code is this?

Q. 30345. A. 30345, okay.

Q. Last one on Page 3. A. Chamblee and Park National.

Q. Then on Page 4, Tucker and Chamblee, Tucker and Park National, Emory and Tucker, Emory and Chamblee. A. Right.

Q. Now, on Page 86, you described, in fact, drawing the boundaries for four of those pairs, Chamblee and Park National, No. 4; Emory and Park National, No. 5; Tucker and Park National, No. 6; and Emory and Chamblee, No. 7. I would like to show you a copy of the map that was included in as Exhibit 71. A. Yes.

Q. In your report. Now, you will notice there are some lines drawn on that map. Can you tell me if the lines drawn on that map through 30345 are essentially faithful to the descriptions on Page 86? A. I would have to check that out one by one.

Q. The descriptions are there on Page 86. A. Right.

Q. Could you do that? A. All right. Park National, I would have to **[1048]** have a bigger map of the area. Park National and Emory.

Q. Well, okay, Park National and Emory. A. Running roughly parallel to La Vista and Briarcliff. Park National is about a mile north of the boundary.

Q. Okay. Park National-Emory is between, roughly parallel to La Vista and Briarcliff. A. Right.

Q. There is a line on there that is between and roughly parallel to La Vista and Briarcliff? A. Right.

Q. Is that essentially where the line—I am not trying to get precise with you here—— A. Yes, I think that's right.

Q. And then, let's see, No. 4, between Chamblee and Park National, essentially vertical to the Buford Highway, I think there is a line on there that meets that qualification; is that right? A. I am trying to find Buford Highway on here.

Q. These papers are a little small. A. It is your Xerox of Xerox, yes.

Q. Yeah, Buford Highway is up on the left-hand side there? A. Yes.

[1049] Q. Right. That would be the boundary between Chamblee and Park National, or something like that? A. Yes, yes.

Q. Okay. And then No. 6, approximately, essentially coincides with Shallowford and Briarlake Road, that would be between Tucker and Park National? A. Right.

Q. And that would be the other one that is on there; is that essentially accurate? A. Yes.

Q. Okay. And the last one essentially coincides with Briarcliff Road; it is compensating for Briarcliff's winding, and you said that your lines were straight. Is that essentially accurate there? A. Yes.

Mr. Sims: Your Honor, we would like to introduce this as Plaintiff's Exhibit—I am not sure what the next number is.

The Clerk: 217.

Mr. Sims: As 217.

The Court: All right, it will be admitted.

By Mr. Sims

Q. Doctor, can you tell me how many banking markets those lines represent or do they represent any **[1050]** banking markets? A. No, they do not represent any banking markets.

Q. What do they represent? A. They represent a boundary which divides the customers of the banks in question that are drawn from the zip code, and says on one side of the zip code they are drawn—if we take this as the boundary of Tucker's banking market, and also the boundary of Park National's banking market. If we take that line between them, we then ask how much business does Park National have on the other side of the boundary and how much business does Tucker have on Park National's side of the boundary. This was done to see whether the apparent overlap in the zip codes was scattered throughout the zip code or whether it could be separated from one side of the zip code and the other. And by putting in boundaries here, these boundaries were attempting to make such a separation, and the results in Exhibit 40 simply show that, of course, they are not totally separate. Of course, there are some customers who are drawn from the other side. That would be expected, but, basically those are nearer to Tucker, go to Tucker, and they are getting their business from different parts of the same zip-code area.

Q. Now, if I understood you correctly, are you saying then that those lines which divide, say, Tucker **[1051]** and Park National, those lines represent the outermost boundary of each's banking market, as you have delineated? A. Essentially, yes.

Q. Okay. Now, in drawing those lines, of course, you didn't consider any other banks at all; is that correct? A. That's correct.

Q. And you didn't consider any other customer of any bank's? A. That's correct.

Q. If the other banks that were sellers in this zip code were included in your analysis, how many more lines would you have to draw to separate all of their banks? A. Well, as many as there were—as there were banks clearly multiplied. This would be one time. You are getting some permutations and commutations there that I have since forgotten. But, it seems to me that that really isn't the question that I would want to ask, because the question is, does one of these C&S banks draw customers from the same area as another C&S bank, which is different from the question, "What banks do each of these C&S banks compete with. It is a very different question, and, in this particular situation, it was the former question that was relevant.

[1052] Q. Let me show you another chart, if I can. Now, this chart purports to show what banks draw the demand deposits, a thousand dollars and under, from the various zip codes which you included in the market of C&S Emory. The last one on there is 30345. According to the chart, all of the banks on this list draw from that zip code. Would you be surprised if this were in fact accurate? A. No, it wouldn't surprise me. That's why we did the boundary analysis.

Q. I'd like to introduce Exhibit No. 218.

The Court: Two eighteen.

Mr. Doyle: If Your Honor please, we object to it. We have not seen it before, haven't had an opportunity to examine any of the figures.

The Court: You may submit your objection later. Admitted.

(Whereupon, Defendants' Exhibit 218 was received in evidence.)

Q. Now, Dr. Baxter, your definition of Emory market includes eight zip codes; is that right, these eight zip codes listed on this chart? A. A portion thereof. I'd have to check it again. I'm assuming you transcribed it correctly.

Q. I hope they are correct. Did you do any calculation as to the market shares within the market which you **[1053]** outlined for Emory of any of the banks in any of the markets you drew? A. No.

Q. Why not? A. Well, these are very localized markets, most of which have only a few banks. By the nature of this localized market, it didn't seem to me that the market share drawn within that market was relevant to the question of whether one C&S five percent bank competes with another.

Q. If you'll look on page 2 of this chart, Dr. Baxter, that I've just given you, it purports to show that the total accounts drawn by all of these banks listed are some 59,000, that C&S National and C&S Emory together hold some 14,700 or almost twenty-five percent of those accounts and that C&S, and all of its correspondent associates and affiliates, all of the defendant correspondent associates and affiliates hold a total of 41.4 percent.

Now, assuming, if you will, although I realize it's contrary to your opinion, assuming that the correspondent associate defendants in this litigation were in fact independent banks, would the fact that this merger would result in an increase in the market shares merged by the origin of accounts of the C&S system from twenty-five percent to forty-one percent, suggest to you that **[1054]** competition would be eliminated? A. There's a lot of questions in there. Let me try and break it down in answering. It would not suggest that competition would be eliminated, no.

Q. You are operating under my assumption, now? A. Assuming that these were independent banks, it would not necessarily suggest that competition would be eliminated, this increase in concentration.

Q. Would it suggest to you that competition would be lessened? A. No.

Q. Is there any difference in your mind between those two concepts? A. Competition being limited and being lessened?

Yes, I think it's a gradation. If each of these banks are separate markets from each other, there need not be very much competition eliminated. It's certainly not a significant reduction in competition.

Mr. Sims: Can I have just a moment, Your Honor?

By Mr. Sims

Q. Doctor, if I could go back to your direct testimony today, did I understand you correctly, did I understand you to say that you do not now feel that after these mergers, disaffiliation would be inevitable? **[1055]** A. It need not be inevitable, no.

Q. Did you not say that in the report? A. Yes, yes.

Q. Are you changing your mind, now? A. No, what I am saying in my report was that this was based on the assumption that if the merger would be denied the relationships between the banks would have to cease because I wanted to look at the situation in which they could become potential competitors. I wanted to ask myself was there any potential for competition. After all, potential competition was one of the things that was alleged in the complaint. That's the only conceivable way that there could be potential competition is that the mergers are denied, that there is disaffiliation, and that upon such disaffiliation each party would be forced to compete. But, we have heard testimony here that officers of the bank don't know what they would do absent the merger.

Q. Now, Doctor, we have had a little talk about concentration ratio, concentration figures. Again, let me see if I understand you correctly. Do you think concentration ratios are at all useful? A. It depends on the purpose. Yes, I think they are useful.

Q. If you were trying to calculate concentration ratios and market share figures in any of the markets **[1056]** alleged in the complaint, would it be appropriate in your mind to include the total deposits of the institutions found in those markets? A. It

would be appropriate to include the total deposits drawn from those markets, divided by the total deposits, total deposits in those markets.

Q. If you calculated—— A. Or of offices within. One can get a very nice concept and then make it operationally impossible when you are trying to calculate it.

Q. When you were calculating the DeKalb market here, would you think it appropriate to take the banks located in DeKalb County and use the total deposits held in those offices? A. It's really the only way to do it. I mean, I could think of better conceptual ways.

Mr. Sims: I have no further questions, Your Honor.

Mr. Hodgson: We have no further questions, Your Honor.
The Court: You may step down.

Mr. Hodgson: The defendants close their case.

The Court: Mr. Kinkaid, how long will you take?

Mr. Kinkaid: Can we have two or three minutes **[1057]** to chat a little bit about this, sir?

The Court: Do you want a break, or can you do it there?

Mr. Kinkaid: Just a very short break would be all right.

The Court: If you can, do it here so we can all stay rather than disassembling and come back, it'll be fine. Take your time.

Mr. Kinkaid: Your Honor, I'm sure you are pleased to hear we can't think of anything more to do.

The Court: The Government rests. Thank you. All right, now, do any counsel insist on oral closings?

Mr. Hodgson: We think the Court will be best served by being spared that.

The Court: Well, briefing is a month, fifteen days; fifteen days reasonable? Do you want a different schedule?

Mr. Kinkaid: I would request until the middle of November for our briefs and findings would be acceptable, if Your Honor please.

Mr. Hodgson: Judge, we have pressed, obviously, from the beginning. We would still like to press as soon as possible. We would like it to be short.

[1058] The Court: Well, as a practical matter, I don't think that I am going to do much reading before December, anyway.

Mr. Hodgson: Well, in that event, we would, at least, like for all of the papers to be completed and in the Court's hands by that time.

The Court: All right. You want to file, simultaneous, say, on the 15th, and then both file rebuttals?

Mr. Hodgson: No, sir, we have considered that, Your Honor, but under the circumstances, we think the Court may get less if we respond——

The Court: All right. Well, okay. Let me split the difference then. I will give you until the end of the first week in November, November 7th, whatever that is. You figure it out, the Monday following that weekend. And, then you take fifteen days thereafter, and then seven days thereafter.

Mr. Hodgson: All right, sir.

The Court: Anything further? One thing that I should note, we have a tremendous record here.

Mr. Hodgson: Yes, sir.

[1059] The Court: Where there is anything particular in the record that you want to rely on, I think it is better if you would do it by quoting it extensively, if you need to, or attaching it as an exhibit to your brief, if you will, because I have a habit

of taking stuff home, and I can't check it back and forth with what is in the exhibit here.

And I would also appreciate it if you would have a preliminary section which is sort of like an appellate brief that would be, in effect, a summary of argument or contentions of the party, or something where you would give me sort of a preview of where you are going and how you get there. I think I can understand what may be thereafter a voluminous brief better if I know what point you are attempting to develop.

Mr. Hodgson: Yes, sir.

Mr. Kinkaid: Your Honor, perhaps we had better try to be a little more specific with the date.

The Court: All right.

Mr. Kinkaid: It appears that the first **[1060]** full week in November starts on the 6th.

The Court: All right. Your first brief will be on—you have got one, two, three, four, five, that is five weeks, so make it on the sixth. You have already got really the heart of your brief in your pre-trial brief, so I am sure you can do it in five weeks.

The defendant's brief would then be due on the 21st. No—yes, fourteen days, the 21st, and I don't want one coming due in that period on—when is Thanksgiving, the 23rd?

Mr. Kinkaid: The 23rd, yes.

The Court: The 21st, all right. Then the rebuttal brief would be due—make it on November 30th. Well, let me stretch it a little bit. The 6th and the 22nd, which would be the day before Thanksgiving and then the 30th.

Mr. Hodgson: Yes, sir. That will suit us fine.

Mr. Kinkaid: Is Your Honor contemplating filing of both proposed findings on the same days?

The Court: Oh, why don't you finish **[1061]** your briefing, and then at that point I will get the briefs and start reading. That is going to take some time, and then how about, say, on the 15th both of you filing proposed findings of facts and conclusions.

Mr. Hodgson: 15th of December?

Mr. Kinkaid: That is why I asked for more time, because I was thinking of putting it between the findings first before we get the brief.

The Court: I think the important thing is to get your contentions and the arguments in primary rebuttal fashion, and then you are sort of on paper. And then the findings of fact and conclusions will be so competitive, I think you can sort of anticipate in advance what they are going to be.

All right. Anything further?

Mr. Hodgson: Thank you, Your Honor.

The Court: I must say it has been a great pleasure. I have enjoyed the case. I think you all have both done a magnificent job. Thank you.

(Whereupon the Court adjourned this matter until further notice.)

[1] GX 198

(Title Omitted in Printing)

The deposition of **Warren Lanham Berry,** taken at the instance of the Plaintiff. Reading and signing of the deposition not waived; signing before any notary stipulated. Taken before William L. Meigs, Deposition Officer, commencing at 11:00 o'clock, a.m., July 28, 1972, 12th floor, Citizens & Southern National Bank Building, Atlanta, Fulton County, Georgia.

[2] Appearance of Counsel

For the Plaintiff:

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For the Defendants:

Alston, Miller & Gaines
By: Walter M. Grant, Esquire
Michael A. Doyle, Esquire
C&S National Bank Building
Atlanta, Georgia

Also Present:

James D. Dixon

[4] PROCEEDINGS

Whereupon,

WARREN LANHAM BERRY

was called as a witness and, having first been duly sworn, was examined and testified as follows:

Cross-Examination

By Mr. Kinkaid

Q. Will you state your full name and residence address? A. My full name is Warren Lanham Berry. My residence address is 684 Lakeview South, Milledgeville, Georgia.

Q. During the course of the deposition I will have occasion to use a couple of terms quite frequently, and we might as well get those squared away at this point. One would be "C&S system." Now, when I use that, I will be meaning C&S National, C&S Holding, C&S East Point, C&S Emory and C&S DeKalb. Other times I will just use one name of a particular bank. But if I say "C&S system," I mean those institutions that I just named, and if I use the phrase "a member of the C&S system," that would mean any one of them taken individually. Is that okay? Do you understand that? A. Any one of the ones you just named?

Q. Yes. In other words if I ask a question about "any member of the C&S system," I would mean—for instance if I asked you "Have you ever visited a member of the C&S system," I would mean "Have you ever gone into C&S East Point or have **[5]** you ever gone into C&S Emory," et cetera. A. I see. But you would not be referring to those banks that the C&S has a 5 percent interest in?

Q. That's right. Those I probably will refer to as "correspondents, associates of 5 percenters." A. All right.

Q. The other term that will probably come up will be "Supplement," and that's the supplemental material that was filed in support of the application for approval to merge. Do you recall that particular document? A. I am familiar with it; yes.

Q. Now, I will just be calling that the "Supplement."

Incidentally, as far as the Supplement is concerned, did you personally have anything to do with the drafting of that? A. No.

Q. Do you recall whether you were consulted with respect to the drafting of any part of the Supplement? A. I do not. I can't recall exactly what part I played in that. I don't—some of the information that is in the supplement I am not as familiar with as other parts of the information.

Q. But you can't recall whether anybody asked you any questions or asked you for any information that would go into the Supplement? **[6]** A. We may have gotten some of the information from the South DeKalb office. I do not recall specifically. It's been a long time ago that that was prepared, and I don't recall exactly how that information was compiled.

Q. Okay. What is your present occupation? A. Well, I am president of the Citizens and Southern Bank of Milledgeville and also I am president of the Citizens and Southern South DeKalb Bank.

Q. Now, how long have you been at Milledgeville? A. I have been in Milledgeville since the first of 1971.

Q. When did you start in as president of South DeKalb? A. Well, the bank was opened for business in September of 1969, and when I became president, from the legal point of view, it probably was a couple of months before that.

Q. What were you doing at the time just prior to becoming president of South DeKalb? A. I was vice president of the C&S National Bank and branch manager of the South Expressway office.

Q. How long had you been in that position? A. Here again, I'm going to give you approximate replies. I would say two years at the position of branch manager at that office. I was made vice president after I got that office. I can't remember how many months.

Q. Could you take us on back in your positions with **[7]** C&S, going back from becoming vice president and taking over the South Expressway office? A. May I come forward rather than go back?

Q. Sure. A. And here again, I've been in many different areas, so I might have one before the other, but I can give you a general idea, and if you want to ask me how much time or something, interrupt me. I would say that I started with the

C&S Bank, the C&S National Bank, in December of 1957—excuse me; it wouldn't be C&S National Bank at that time. It was the Citizens and Southern Bank of Atlanta, I believe, and it later became the Citizens and Southern Bank, and I started with the Citizens and Southern Bank of Atlanta at the Northwest office here in the city limits of Atlanta, and I stayed there for a year or so and them became under the direction of the Correspondent Bank Division, and I operated an animated, electronically operated display concerning how a bank affects the community, and I took this display throughout the state of Georgia. After that I was in charge of the New Business Department, which had 10, 15 to 20 ladies, and we worked primarily—and we also had a couple of gentlemen in that department, and we worked primarily with new business, assisting calling officers and so on for the bank.

From there I was at one point supervisor-adminstrative assistant over the tellers and savings and various other **[8]** departments on the main floor of the main office. I was installment loan interviewer. I became assistant branch manager of the Cascade Heights office. I became assistant manager of the Stewart-Lakewood branch. I became manager of the Roswell-Wieuca branch, and then I became manager of the South Expressway branch.

Q. Had you been working for a bank before '57? A. No. I came up out of the service and went to work almost immediately and went to work here.

Q. Are you also a director of South DeKalb? A. Yes.

Q. Did you become a director at the same time you became president? A. Yes.

Q. Were you one of the organizers of South DeKalb, A. Yes.

Q. How did you first become aware of something called the Citizens and Southern Bank of South DeKalb? A. Well,

I was approached by either Dan Handley or Howard Starks with the C&S National Bank, and my memory fails to tell me which one of these right now, but it was someone, either one or the other, who approached me and asked me if I might be interested in becoming affiliated with a correspondent associate bank, a 5 percent bank, of which C&S owned 5 percent of the stock. And I indicated an interest in this, and **[9]** subsequent to that period of time I was asked if I might be interested in the area in South DeKalb County. And I rode out there and had a look at the area; the bank, the C&S National Bank, had some property out there and they asked me if I might be interested in forming a bank where that property is located. And so that's how I got started.

Q. When you were first approached by either Mr. Handley or Mr. Starks, there was no specific location in mind; is that a fair statement? A. I don't remember whether or not a specific location for the bank was mentioned, although at that point, as I recall, we owned this property. And when I say "we," I mean the C&S National Bank owned this property. I don't know that it was definite that that particular location would have to be the location that we would be talking about.

Q. Actually that was not so much a specific location as the general area or the general portion of the county? A. The general area we were looking at was South DeKalb County.

Q. Are you aware of whether any individuals living or working in the South DeKalb area had approached anyone at C&S with respect to getting assistance to start a bank in that area? A. I'm not aware of that; no.

Are you aware of whether any individual or group of **[10]** individuals, either at the time you were approached by Mr. Handley or Starks or prior to that time, had attempted to form a new bank in the South DeKalb area? A. I was not aware at that time that any attempt had been made. I was told that an attempt had been made to form a bank; it may

have been several years, but previous to us coming out there, that some of the people in the community had attempted to form a bank.

Q. Incidentally, are you aware or can you recall any of the identities of the people who had earlier tried to form a bank in that area? A. I am not sure. I feel like that perhaps I could name a person or two, but I'm not sure at all that that would be correct.

Q. Well, were any of the people who eventually became directors of your South DeKalb Bank, do you know whether any of them had been part of the group that had earlier attempted to form a bank? A. This is what I was going to say. There are one or two directors that might have been in that. It's been—I'm not sure whether they were involved in it or not. I think so.

Q. After the first meeting with either Mr. Handley or Mr. Starks when the subject of a South DeKalb Bank was first broached to you, can you recall roughly how many discussions you had after that with either Mr. Handley or Mr. Starks or [11] anybody else, for that matter, in C&S along the same lines or with respect to the same topic? A. I would like to know what you mean when you say "along the same lines or with respect to the same topic."

Q. In other words, how many discussions can you recall with C&S officers with respect to forming a new bank in South DeKalb? A. I'm taking that as a very broad type question.

Q. Right. A. And I would say that I had considerable discussion with many officers in the bank.

Q. During these discussions, what were you told as to the relationship that this new bank would have with C&S National or C&S Holding? A. I don't recall being told any specific information along those lines.

Q. I think you mentioned earlier that Mr. Handley—or he mentioned something about your being interested in running a correspondent associate in South DeKalb; is that correct? A. Right.

Q. Was that the only discussion you can recall with C&S Officers as to the relationship between this new bank and C&S? A. I'm sorry, but I don't understand your question.

Q. Okay, let me try it again. What I'm getting at is **[12]** your earlier statement that Mr. Handley asked you if you were interested in running a correspondent associate in South DeKalb would, in effect, be an answer to my question, whether during the discussions you had with these various C&S officers if there was any mention of the relationship between C&S and the proposed bank? A. Not per se. I would say no.

Q. Is all you can recall that this would be a correspondent associate, and C&S Holding would have 5 percent of the stock? A. That's all I can recall.

Q. At that time, what was your understanding of the term "correspondent associate"? A. I really was not too familiar with the term "correspondent associate." I understand that this was an oportunity for me to work with a board of directors and to also be able to make a sound financial investment. But I really didn't have a lot of information about the term "correspondent associate."

Q. Well, wouldn't you at that time have been interested in finding out what you were getting into? A. That's correct. That's right, but I knew what I was getting into.

Q. Well, let me ask it that way; what was your understanding as to what you were getting into? **[13]** A. It was the formation of a bank whereby it would be affiliated with the C&S Bank; the C&S Bank, C&S Holding Company would own 5 percent of the bank, that C&S Bank would be very helpful to me in the formation of this bank, that they would certainly

support me in every way that was possible, that my C&S training would be of benefit to me in going ahead but when that training was inadequate and that experience was lacking that I would be—that the C&S resources would be available to me to help make that bank prosper and grow and to properly serve the community.

Q. When you say the bank would be affiliated with C&S, do you have anything in mind more than the 5 percent, or is that what you mean by "affiliated"? A. Well, from a stock viewpoint 5 percent would be all that would be involved. I do have more in mind than just saying a 5 percent affiliation. I feel like that the C&S influence would be certainly involved in that bank, that C&S trained people would be there, that the C&S style of banking would be used in that area.

Q. What do you mean by "the C&S influence" would be there? A. Well, when I say "influence," I'm speaking of people such as myself who were raised in the C&S National Bank and who have the C&S National Bank's approach to banking and serving the community.

[14] Q. Is that all you mean by "C&S influence"? A. Well, I think that by "influence" we could also include guidance, and, as I mentioned, where my experience was lacking I would have the availability of the resources and guidance of the C&S National Bank and all of its many resources.

Q. You indicated earlier that C&S is the only bank for which you worked; am I right in that? A. That's correct.

Q. As a matter of fact, in running a bank, in running any bank at this point, would you know how to run that bank in any other way than the way in which you have already been trained at C&S? A. I don't believe that I would want to run a bank in any way other than the way I've been trained.

Q. In other words, when you went out to form the bank at South DeKalb, at that time the only way you knew how to oper-

ate the bank would be the way you had been trained during your tenure with C&S; would that be a fair statement? A. That would be a fair statement.

Q. During your discussions with C&S officers before the South DeKalb bank was actually formed, can you recall any discussions as to the manner in which the stock in the new bank would be distributed? A. Well, the recollection I have would be that we had **[15]** many people within the C&S National Bank and its affiliates, individuals who would like to have an investment in that bank out there, and, of course, we wanted people in the community to have a chance to have an investment in the bank also because we felt like that was good business. And, quite frankly, I wanted those people to have stock in the bank who I felt like would support the type management we would have.

Q. Included in that discussion, was there any discussion as to the amount of stock any one individual would be allowed to purchase? A. I think that we generally wanted to keep any one person from having—and when I say "wanted" I'm including directors and everything; we wanted to keep the directors, I believe—and give me a little leeway here—but I believe we wanted to keep the directors to about 600 shares each. We wanted to keep other people, other than myself and the C&S Holding Company, to 50 to 100 shares each. Now, that's a guide. And we felt like that would be the best distribution of the stock for the—to maximize the benefit of those holding stock and also the bank.

Q. Incidentally, what, roughly, in terms of percentage of the bank's total stock, would 600 be? A. I really did not compute it. You could compute it very easily, but I don't know.

Q. The directors, then, were to have no more than what, **[16]** 600? A. I believe 600 was right. It might be a hundred or so off, but I believe 600 was correct.

Q. What was the reasoning behind keeping sort of a lid or limit on the amount of the stock that any one individual could have? A. Well, simply because we wanted—it was a good investment, and, as I said, we wanted to maximize the benefit to the stockholders and also to the bank, and we felt like spreading it out in the community and also within the officers and employees of the C&S National Bank and its affiliates would accomplish that goal.

Q. When you say "to the benefit of the community and the bank," by "the bank" do you mean South DeKalb? A. Yes, South DeKalb.

Q. To your knowledge, how many shares—or it might be easier for you to think in terms of percentage—of the total stock was actually sold to C&S officers and employees? A. I think that it was probably around 50 percent. I did not look at it from a specific percentage viewpoint, although we did tend to divide it, and I think it came out right at around that amount.

Q. To your knowledge, what percentage of the C&S National or C&S officers and employees who bought the stock, what percentage of them, roughly, would have resided in the [17] South DeKalb area, to your knowledge? A. Let me go back to your previous question. I was—it might not have been as high as 50 percent. You said "officers and employees" of the C&S National Bank and affiliates. I really can't give you a definite percentage in that area. I think that I had at least 50 percent that I knew the people would support the management of the bank, but I don't know that in just those two categories it would be that figure.

Now, if you would ask that second question again.

Q. Let me just back up a second, then, on this one. Insofar as supporting the management of the bank, by that do you mean that the 50 percent who bought the stock and would support the management would support the management in terms of bringing business into the South DeKalb bank; is that what you

had in mind? A. Well, no, I had in mind that they would support the type of bank that I wanted to run.

Q. Well, how would they support it, in other words? A. Well, I wanted people that would be knowledgeable about banking, that would recognize a bank's responsibility to the community, that would realize the rules and regulations that the bank has to adhere to and that kind of thing.

Q. In what way would that sort of awareness on the part of the stockholders be important to the functioning of the bank? **[18]** A. Well, I think it's important because we are a bank that is involved in community service, and we support those things that we feel like are important to the community, and you need your stockholders behind you in that area. We also support pretty close auditing procedures, and these type things cost money, and if you have stockholders that don't support the expenditures of funds or this type of thing, well, then, you've got a problem.

Q. And in your reference there to stockholders supporting various activities, are you referring to activities of the South DeKalb bank? A. South DeKalb bank; that's correct, yes.

Q. Okay, going ahead, then, on the portion of the stock that was purchased by C&S officers and employees, my question then would be, of those stock purchasers do you have any idea what percentage actually resided in the South DeKalb area? A. What percentage of all stock that was purchased resided in the DeKalb area?

Q. All right, that may be an easier way for you to answer it. A. Either way; I just wanted to be sure I was interpreting it correctly. I really can't say. I will say this, that a large percentage —now, this is not a very definite way to answer the question, but I really don't have a definite percent, **[19]** but I know that the directors sold a good bit of stock, that there were many people that wanted stock in the bank, local people, many of whom I did not know.

Q. Now, can you answer it the other way? I take it that answer is of the total stock? A. Right.

Q. Okay, can you answer it the other way as to the C&S officers and employees, specifically? A. Lived and resided in South DeKalb or DeKalb County?

Q. South DeKalb area. A. South DeKalb area. We did have some that resided in the South DeKalb area. I can't give you a percentage.

Q. Were you interested in trying to get that stock in the hands of C&S officers and employees who also resided in the South DeKalb area? A. It makes sense to have folks have stock who are affiliated with C&S National Bank and live in the South DeKalb area, although, really, that didn't enter my mind at that point. We had quite a people wanted stock in the bank, and that was just—I didn't get to that consideration.

Q. From the standpoint of the bank, did you consider whether or not your bank would be better off if all or virtually all of the stock were placed in the South DeKalb area? A. Well, I really don't feel like it would be better **[20]** off. I think that if you had it all in the South DeKalb area it certainly would have the advantage of having all local people owning the stock, but it would have the disadvantage of not having people in the banking fraternity owning stock in the bank, which, I think, is just as important. I think it was important that we have people affiliated with the C&S Bank own stock in the South DeKalb bank.

Q. Well, why was that particularly important? A. Well, I thought I answered that previously when I said that because those people have the same goals and desires that I did as president of the bank, and that is the style of banking that we performed out in that area.

Q. When you were talking in those terms, I thought you were referring to the stock that was distributed locally; that's what you were looking for in local subscribers. A. No, I was referring to the stock that was distributed overall and primarily and in

particular the stock that was distributed to the C&S National Bank officers and employees and affiliate officers and employees.

Q. Insofar as the limitation on the amount of stock any individual could purchase, was the question of an individual getting enough stock to in any way control the bank a consideration in that regard? A. Well, it's a consideration to me because I certainly would be not a very informed person if I didn't consider who **[21]** owned stock in the bank that I was president of.

Q. I'm not sure if you understood my question, or I don't understand your answer. Was one reason for limiting the stock that any individual could purchase, was any reason for that your fear that your fear that any one individual, if he got X percentage of the stock, would in some way be able to control your bank? A. Well, I don't know that I really gave that much consideration. My prime reason for that was, as I stated previously, was that I wanted the stock to be spread out because I thought we would get maximum benefit from it at the bank that way.

Q. During these discussions with C&S personnel before the bank was actually established, what was the discussion as to where the bank would be located, the status of the land on which the bank building would be located, whether the new bank would buy the land, buy the building or rent the land and rent the building; what were the discussions generally in that regard? A. Well, the C&S National Bank—and here I say "National Bank," and I'm not sure whether it was the National Bank or the Holding Company—but they owned a piece of property out there; they put together two or three pieces of property, and to me it was just ideal for a bank location. So we—I say "we"; myself and our board of directors wanted to use this **[22]** piece of property so we negotiated with the C&S Bank regarding leasing this property from them at a rate of whatever amount of charge would be involved, and we accepted this piece of property because it was beneficial to the bank.

Q. During the period of time before the bank actually opened for business, what sort of expenses were incurred in terms of getting a charter and getting the bank ready to open for business? A. This is prior to opening the bank?

Q. Yes. A. And when you say "what expenses," this is not easy to answer for two reasons. One is that it was a long time ago, and number two is that they are varied.

Q. Well, if you could give me just a general idea, that would be sufficient, really. A. I would say that there were some expenses involved in that my salary is one, but at that period of time my salary while I was working on this bank, the C&S National Bank handled my salary for a period of time, and they also did the same thing for my cashier to give us the opportunity to work on the bank. But those would be some expenses. Of course, in the opening we had a lot of expenses involved there, in the celebration for the opening of the bank, and in the hiring of people we ran all of our employees that we hired through the C&S Personnel Division, and they tested them and this kind of **[23]** thing to see that they would be adequate employees. When you say "expenses," a lot of expenses were really given to us by the C&S National Bank. We had so much advice and so much help in forming this bank that a lot of it wasn't—we didn't pay for. But it certainly would have been expensive had we had to pay for it.

Q. Incidentally, I don't think we established when all these things started. Can you remember your first meeting with either Mr. Handley or Mr. Starks? A. I can't—I would say that probably the first of 1969; I would say maybe in February, But I don't remember specifically. It might have been in January.

Q. When you actually—I think you indicated that it might have been sometime around July of '69 that you formally became president of South DeKalb. At that time, from then on, by whom was your salary paid? A. I can't remember

exactly when my salary was paid by the C&S South DeKalb bank, but somewhere along in there they began paying my salary. It might not have been until September, because I think it would probably have been changed over when the bank opened. But I'm not positive.

Q. After the bank opened, was there any arrangement made by which South DeKalb reimbursed C&S National for the salary, your salary, that had been up till then paid by C&S National? **[24]** A. No, not that I can remember.

Q. What I had in mind there was not only just a—you know, "Here's a check for Mr. Berry's salary for those X number of months," but was there any other kind of payment that would have covered your salary? A. No. And also I'm trying to recollect here, but my salary might have been paid by the National Bank throughout that year, until the end of that year, until December of '69. I said September, but it might have been paid to me and my cashier through December. but I'm not sure about that. You see, we were technically severing our relations with the C&S National Bank, and my cashier and myself had both put in a long period of time, so I don't feel like it was out of order at all for them to pay us for a period of time.

Q. What sort of relationship were you severing with C&S by taking on the South DeKalb job? A. Well, obviously it's a separate corporation, and the board of directors of South DeKalb in effect hired me, and also I employed the employees out there; although I used the C&S Bank and their facilities, I employed the people in that bank. So it was a severance in that sense of the word.

Q. From a personal standpoint, did you have to give any benefits up of any kind that you had with C&S National in order to take on the South DeKalb job? A. No, my benefits remained the same. The board **[25]** adopted the same benefits that I had with the National Bank, because, quite frankly, if they had not seen fit to do so I would have had to give that serious considera-

tion, because I have a great many benefits now and had at the time when I was at the National Bank.

Q. Is one of those benefits called, roughly, "pension and profit sharing plan"? A. Yes, and, as a matter of fact, if I had given up that benefit, obviously it's—and related it to the profits of the South DeKalb Bank, there for a couple of years I wouldn't have had any profit sharing at all.

Q. Is that one plan, pension and profit sharing, is that one plan? A. Two separate plans.

Q. Could you give us a general idea of how those plans are set up and administered; just roughly what are they? A. Well, of course the pension plan is self-explanatory. When you reach —and I'm not, perhaps, as well versed on the technicalities as I should be—but when you reach retirement you have an income, and it's based on a percentage of your last five years' salary, I believe, or maybe there are a couple of alternatives. And then the profit sharing plan is based on a formula related to the National Bank and its affiliates and their income. The reason for that simply is, as I stated, so that by becoming associated with a correspondent **[26]** associate bank you would not give up the benefits of profit sharing.

Q. So far as the pension plan is concerned, is that one of these things where a certain amount of your own salary goes into a fund, and then to some extent what you put in is matched by your employer? Is that roughly the way—— A. No. Your pension plan is handled entirely by the bank. You put in nothing. In your profit sharing fund, you have the privilege of putting 2 percent of your salary in at the end of two years, and 4 percent at the end of five years or 4 percent after you reach 35 years of age if it were to be before five years, of your own income, and the bank has a formula, and in this case the South DeKalb bank accepted the C&S National Bank's formula, the board of directors accepted it, and it was based on the profits of the C&S National Bank and affiliates. And whatever income came out

after that formula was computed was the profit sharing that was divided between the participants of the plan.

Q. So far as the pension plan is concerned, where do the funds come from that go into the plan for your benefit? In other words, let me put it this way. You indicated that the bank puts the money into your pension fund; you don't put anything in. What bank is it that puts that money in? A. No. The C&S South DeKalb bank puts money into both funds, but it's based on the C&S National, on the formula that **[27]** we have from the C&S National Bank.

Q. I see. So that the funding for both plans comes from South DeKalb? A. That's correct.

Q. What discussion did you have with C&S personnel before the bank was started as to the name the new bank would have? A. Well, I had discussion with, I think—I believe that I had discussion with the Research Division, and we just arrived at the name. We wanted a name that would describe the location of the bank, and that's the reason we included "South DeKalb."

Q. What were the discussions insofar as including "Citizens and Southern" in the name? A. There never was any question about that. I mean I certainly wanted the C&S name in the name of the bank for the obvious benefits that we would derive from the customers.

Q. Did any of the C&S personnel with whom you discussed this, like Mr. Handley or Mr. Starks, did you have them or anybody in a similar position suggest that you use C&S in your name, or was this strictly your idea? A. Well, I don't think—now, really, when you say whose idea it was, it just wasn't any—it was just understood. I don't think there was any question about it. There certainly wasn't on my part, and I don't think there was on anybody **[28]** else's part. We were going to use C&S. The only question that came up was, "What other name are we going to include?"

Q. Could you spell out a little bit more your reasons for wanting "C&S" in your name? A. Well, "C&S" stands for progressive banking with normally, I would say, excellent customer service. It has a very fine reputation. I wanted "C&S" in our name because it reflects strength; it reflects integrity. I could take the benefit of all the C&S advertising that's done on radio and television and this kind of thing. Just numerous benefits in using the name.

Q. What were the discussions before the bank started with C&S personnel as to the type of services that C&S would provide in the bank? A. Well, I communicated with some of the people downtown relating to what kind of services we would provide.

Q. Generally speaking, would the services that C&S was going to provide to the new bank when it started, would those services be the type that are ordinarily referred to as "correspondent services," to your knowledge? A. I really don't know what "correspondent services" refers to.

Q. What discussions did you have with C&S personnel before the bank opened for business as to the—for example, the hours that the bank would maintain? **[29]** A. Well, we talked about what hours might be most beneficial to serve the area, and, as I recall, I probably talked with our research division to try to find out what kind of hours to use. I also talked with my board of directors, and I think that the decision we made has proved to be the right one.

Q. Now, as I understand it, you started opening on Saturday; is that correct? A. Yes.

Q. Whose idea was it to open on Saturday, if you can recall? A. Well, I would have to say it would have been my idea.

Q. And what was your basis for that idea? A. Well, I looked at one thing, and that was how best to serve the community

and how to get the most business for that bank, and I felt like being open on Saturday would serve both of those purposes.

Q. Did anybody in the Research Department have anything to say in terms of Saturday hours? A. No, not really. We discussed—I discussed it with two or three people in the bank about what would be good banking hours, because it's a very important in handling customers in order to be sure that we were open at the best times. We had some affiliate banks, correspondent associate banks and **[30]** affiliate banks that were open until 6:00 on Friday, but there was no bank in that area that was open on Saturday at the time. So I think that almost anyone that I talked to to try to get the benefit of their ideas agreed that Saturday banking would be a benefit to the bank, and when I say "the bank," I mean the South DeKalb bank.

Q. Did you have any discussions with C&S personnel before the bank was open with respect to the service charges that you would have on the checking accounts? A. I don't recall having any specific discussions along those lines. I just used the service charges that I was familiar and had used in the past.

Q. In other words, was that, the initial decision as to the service charges with the new bank, was that basically your decision? A. Yes. I think it probably would be consistent with other service charges within the metropolitan area of Atlanta, though, pretty much, because it has to be competitive.

Q. When you say "competitive" with other banks, what banks do you have in mind? A. Well, any banks in the area there at that time. You had the Glenwood National Bank, I believe—they might have changed names since then—the Glenwood National Bank, and the First State Bank came in subsequently, around the same time that we did. We had another bank that came in out on Glenwood **[31]** and Gresham Road; I can't recall the name of it. We had the Bank of Georgia right up the street, and I think probably you will find that most of the times

those charges seemed to be pretty much the same because competition has an effect on what you charge at the bank.

Q. Did you take into consideration the service charges of the downtown bank in making your decision? A. I took into consideration what everybody was charging.

Q. How about discussions with C&S personnel as to interest rates that you were paying in various types of savings accounts? A. Well, I used my past experience to try to arrive at interest rates that we paid. I don't recall any specific discussions about it. I just really didn't feel like it was necessary to have any discussions, but that was the way I wanted it to be. I will say this, that I would not have used those same service charges and/or interest rates had the competitive situation and the market situation been different. They may have been lower; they may have been higher. As a matter of fact, right now at the Citizens and Southern Bank of Milledgeville, we pay a half percent differential on regular savings from what the—most of the banks in the Atlanta area, including C&S Banks and affiliates, pay. We also have a difference in the minimum balance maintained for **[32]** the checking account, and we also have a difference in service charges for that checking account, because in our particular locale we have to consider the competition and we have to consider the other factors involved in it there. Our minimum balance in a checking account happens to be higher that it is—in Milledgeville than it is in Atlanta.

Q. When you were managing the South Expressway office, did you have a different service charge and interest rates on savings accounts than other branches of C&S—that C&S National had at the time? A. At South Expressway?

Q. Yes. A. You're speaking about checking accounts and savings accounts?

Q. Yes. A. I believe they were the same as far as I can recall. And when you say "savings" you also get into an area of perhaps time certificates of deposits or large deposits of over

$100,000. Well, those can almost fluctuate with individuals. So you're asking me a question that I want to be sure that we are communicating about.

Q. Okay, let's leave aside the large CD's and just consider more the personal type savings account. A. I would say as far as I can recall they were the same.

[33] Q. Did you ever consider changing them because of the competitive situation in your particular area? A. At South Expressway, for instance?

Q. Yes. A. No—I mean when you say "consider," I try to consider anything to improve a particular office or branch or whatever I happen to be working with. I don't recall any specifics about raising them or lowering them or anything like that. Now, I could, and if the situation would warrant it, there might be an occasion or two where a service charge might be waived because of one reason or another. It could be that a person is in a charitable work, and maybe you feel as though you would want to encourage that kind of activity, or it might be for another reason or two, but generally speaking that would be an exception.

Q. Would you have been able to have different service charges on checking accounts and different interest rates on personal savings accounts at South Expressway from those in effect at other national branches in the Atlanta area? A. I don't know. I didn't pursue that. I don't know.

Q. Were there any discussions with C&S personnel with respect to interest rates that you would be charging on the lending side of the South DeKalb Bank? A. I would have to say —or I would say; I don't have to say—I would say that I discussed interest rates with many [34] individuals, and I do that now, simply because it's very difficult to keep up with what kind of interest rates are proper for certain kinds of loans. As an example, within the last couple of weeks I have had a request for a mobile home development loan, and I also had a

request for another type loan—I'm trying to remember what kind it was right now—but anyway I've had two requests that I can remember where I—well, for receivables, an accounts receivables loan—and so I made several phone calls trying to find out what a competitive rate should be and what we ought to get for that kind of loan. As it turned out, I didn't charge the same rates from the information that I got. I do that quite often because if you don't handle a particular loan very often, you are not familiar enough with it as to really what is involved in that type lending.

Q. What other banks—Now, this, I take it, was in Milledgeville? A. Yes. But I might call—it might not be C&S necessarily. I might turn around and call anyone that would be knowledgeable about a particular type loan and say, "Look, what would be"—and "What kind of documentation do we need on this, and how much work is involved in it," and, you know, refresh my memory about the risk involved in it and this kind of thing.

(Short break.)

[35] Q. We were talking earlier about the assistance that the South DeKalb bank would receive from C&S. Did C&S expect anything from South DeKalb in exchange for the assistance it was going to give it and actually did give it? A. They didn't ask me for anything. You would have to them if they expected anything. I can't answer that.

Q. But so far as you were concerned, there were no conditions attached to the assistance you received? A. No, none whatsoever.

Q. Did they make it clear to you at that time that you were free to run the bank as you saw best, you and the board of directors saw best? A. I think that they recognized that I didn't have experience in all areas, especially in running a bank that had its separate operations and board of directors. So there was no doubt that I was president of the bank, but I think that

I expected to communicate with them in the areas that I was weak in.

Q. So far as savings rates are concerned, since the bank has opened have you had occasion to change any of the rates that you pay on personal savings accounts? A. No, not to my knowledge. And, I might add, when I say "not to my knowledge," the reason I would say that, I am 99 percent sure that that is true. But you see, since I left—I'm not active at South DeKalb at this point on a day-to-day **[36]** basis because I left there when this merger was in process, and I anticipated that this matter would be resolved at any time, and therefore I accepted another position. So there are some things that I am not as clear on as I would be if I were there on a day-to-day basis.

Q. As a matter of fact, if I recall correctly you were there really less than two years? A. That's correct.

Q. Have there been any changes in the banking hours at South DeKalb, or were there any while you were still there? A. If there were, they were not of a significant nature. We could have changed an hour, an hour and a half or half an hour or something one way or the other, but nothing very significant. We found that our banking hours were just really—as far as people coming and using the bank, that bank is just really very busy, so we didn't see any reason to try to change the hours and still don't, really.

Q. Incidentally—and maybe I left this out—on the rates on savings accounts, did you ever think in terms of or consider changing any of those rates? A. I have considered it, really, and you asked me that question about the branch; I have considered it before on several different occasions, and I believe that perhaps at South DeKalb—and I'm not positive about this—but I believe that I talked it over on occasion, the possibility of changing **[37]** rates to get the pros and cons of it, but I decided that I didn't think it would be to the best interests of the bank to do so.

Q. With whom did you discuss those possibilities? A. I really don't recall. I just in general seem to remember, and I'm not positive, seem to remember considering the possibility of making some changes, but we didn't do it. We just didn't feel like it was in the best interest of the bank.

Q. Do you have any recollection as to whether or not any people you discussed the possibility of changing the rates on savings accounts with would have been C&S personnel? A. I really don't know. It could have been with the board of directors; it could have been with our own personnel; it could have been with some of my associates with the C&S National Bank; it could have been with some of my peers with other 5 percent correspondent associates. The thought, though, has come to my mind from time to time because I would be pretty naive if I didn't try to consider that possibility.

Q. When—Let's take the same thing with the banking hours. The changes, the slight changes which may have been made, to your recollection, in the banking hours, were any of those changes discussed with anyone from C&S? A. I don't recall. I really don't recall any specific **[38]** changes, first of all, although there could have been, and if there were I don't recall discussing them with anyone except making up my own mind to do it.

Q. Did you ever, during the time you were at South DeKalb, receive any advice from anyone at C&S with respect to savings account rates? A. Here again, I don't recall that being a real problem or an issue, and I just cannot recollect any conversations along those lines specifically or even—I'm not sure at all.

Q. Can you recall receiving any advice from—or suggestions from anyone at C&S with respect to your banking hours? A. I sought advice relating to the opening—I believe I mentioned this—to the opening on Saturday, which would be

banking hours, and I would think that I discussed it with people within the C&S National Bank to get their opinions.

Q. What I meant was after the bank was opened, you mentioned that there might have been a change or you might have considered a change. A. I don't recall.

Q. In view of the fact that it was only a couple of years ago that you were at South DeKalb, would the fact that you can't recall receiving advice from C&S on banking hours or interest rates on savings accounts indicate to you that it's **[39]** likely that you did not receive such advice? A. I think it would indicate that it was likely that there were no changes in hours, and it was likely that the necessity of trying to change the savings rates didn't seem important to me.

Q. While you were at South DeKalb, did South DeKalb in any way participate in a program to coordinate its banking hours with the banking hours of any other, either C&S system bank or other correspondent associate? A. No.

Q. Are you aware of any program which involved coordinating the hours of C&S system banks and hours of C&S correspondent associate banks in this area? A. No.

Q. This would be particularly with reference to the question of being open on Saturday. The though would be having banks in a particular area—some of the banks in particular are open on Friday, late on Friday, and others are open on Saturday so that all banks in that area did not have to be open both on Friday—you know, late Friday—and also on Saturday. Does that ring any bell with you? A. No, it doesn't. As I said, I sought advice on when would be the best time to be open, and I know that several people mentioned to me that being out in the community, that being open on Saturday would seem to be much more advantageous, **[40]** and I agreed with that thought, and that's the reason we opened on Saturday. And in fact, I say I agreed; it might very well have been my original thought. But

I know that other people felt the same way. But there's no communication or coordination between other banks insofar as hours are concerned.

Q. Well, at the time you were kicking around the idea of staying open on Saturday when the bank opened, was any thought expressed in your discussions with C&S personnel as to the fact that your being open on Saturday would in any way fit into a plan to coordinate your hours with those of any other C&S Banks? A. No.

Q. You may have covered this already, but I'll ask it anyway just to make sure. So far as the service charges on checking accounts is concerned, were any changes made in those while you were at South DeKalb—that is, after you started the business? A. That is difficult to answer. There could have been some changes made. I really don't recall. When you refer to checking accounts, we have several classifications of checking accounts, and you might be referring to many company checking accounts. Well, we change our method of analyzing company accounts fairly often, fairly routinely, depending on what the price of money is and what kind of credit we can give a commercial customer for keeping a certain balance, and also, **[41]** where as in a personal account we say if it's over a certain amount you don't have to pay any service charges, where on a commercial account it's handled differently. So when you say "changing service charges," you see, it could include the changing of the credits that we give on company—the interest rate credit we give on company accounts and this kind of thing. So to my knowledge, any significant change, no.

Q. So far as the personal accounts would be concerned, can you recall any change with respect to the minimum balance that would have to be maintained in order to have a free checking account? A. It seems that we did have—and here again I'm not positive—but it seems as if we did have a reduction in the minimum balance required for no service charges on a personal account during the period of time that I was in South DeKalb.

Q. Can you recall how that change came about at your bank? A. I believe at that time we had a reduction. Many of the banks in Atlanta—I think that the Trust Company of Georgia came out with a minimum reduction and minimum balance and, as a result, we felt like it would be wise from a competitive point of view to meet the competition.

Q. At that time what was the nearest Trust Company office to your bank, roughly? A. Well, there's one in Decatur. I don't know how— **[42]** the Trust Company has affiliate banks quite a bit. I do know they have a bank in Decatur. I don't know exactly how far it is. I would say 10 minutes.

Q. Do you know whether the Trust Company Bank in Decatur was in existence at the time you made the change? A. I believe there's a bank in Decatur; I'm not really sure. I think there's a bank in Decatur, but I'm not sure, in answer to your question.

Q. Did you consult with anyone at C&S with respect to lowering the minimum balance? A. I would think that I probably communicated with someone within the bank to get their advice on the situation.

Q. Can you recall what the advice was? A. No, I can't. I think at this time, as I recall, all of the banks in Atlanta either had or it was indicated that there was a drop in the minimum balance. I know that in the past I had been familiar—when I was with C&S National Bank I had discussed it with our comptroller's department about a reduction in this area relating to the cost of the accounts and that the C&S National Bank at that time was studying this particular thing. So I think it was something that many banks found out, that it was as profitable to make this reduction as not. And that's the reason that it came about. They related it to the cost of handling these small personal accounts.

Q. Could you briefly explain the commercial account that **[43]** you mentioned a little while ago. A. What are you referring to?

Q. Well, you indicated that on the commercial side of checking accounts that there are changes quite frequently, depending on the cost of money. A. Well, I think it's just related to what used to be referred to as the "prime rate." That's no longer referred to in that area as often now. But I think that when the prime rate changed on the commercial accounts we tried to change the credit that we gave the commercial customer to offset the expenses in handling the account. Does that answer your question?

Q. You are still talking about a checking account? A. Yes.

Q. And if I understand you correctly, you would be attempting through the charge on the checking account to make up for what you might be losing in terms of what you would be getting on the loan side with that account; is that what you are saying? A. Well, we're just saying—let me perhaps rephrase it and see if we're communicating. I'm just saying that if a company maintains a certain collected balance with the bank, that we give him a credit for that collected balance, and that credit is based on the money market at the time and what money is worth, and that credit is used to offset the expenses, per **[44]** check expenses and the statement of expenses for handling that account, and that is used to offset it, and then that difference either is a plus or a minus, as the case may be.

Q. Well, to what extent did you consult with C&S personnel with respect to the changes that you made on the commercial checking accounts? A. Well, let me say this, the C&S National Bank and affiliates kept me pretty well abreast or informed about what these rates were. Being a small bank, the prime rate really does not mean a whole lot to me, so they would certainly communicate with me in this area and also in many other areas about these things that I really could not keep informed properly about.

Q. Generally speaking, how would they communicate with you on those matters? A. Well, I get memorandums, telephone calls, this kind of thing.

Q. What services did South DeKalb offer its customers on its own that would be in the sense that it did not require any assistance from some other bank to offer the servic ? A. Well, that's—here again, when you say "did not require," we used assistance from the C&S National Bank for most all of our services if you wanted to look at it that way. We perhaps could have handled certain accounts, like checking accounts, for instance. We used demand account processing, but **[45]** we paid the C&S National Bank for that service. There is a possibility we could have handled it with our own bookkeeping and proof departments, but it would have been much more expensive and much more difficult to manage. So when you ask me what could we have offered without using the service of the C&S National Bank, I would say that we just did not choose to not use the services of the C&S Bank. It was much easier and more practical to do so.

Q. To your knowledge, could the kind of assistance that you used from C&S in making your services available to your own customers, could you have obtained the same kind of assistance or something very similar to it from other banks or large banks in this area? A. Well, I don't think so. I don't think the other banks have the management that the C&S does, and I think that I could get more expertise from the C&S Bank than I could from the C&S Bank than I could from the other banks.

Q. The use of the computer on your checking accounts that was mentioned, would that be a service that, to your knowledge, would be available from other banks in this area? A. Yes, I would think from the large banks it would be available.

Q. Could you, in just general terms, indicate the categories of services that your bank offers—and when I say "your bank," I mean South DeKalb? **[46]** A. Well, it offers savings, checking, and, of course, drive-in banking; all different kinds of lending. If we had need of trust services we would refer trust prospects to the C&S National Bank. We do not have our own trust account,

but we certainly want to take care of our customers if they have a need in that area, and also that would be true with profit sharing and pension and this kind of thing. We offer just any service that anyone would need. If we didn't offer it at that bank and we couldn't handle it at that bank, then we would see that the customer was served through the facilities of the National Bank.

Q. Are you aware of any other institution in—we'll say in Georgia, other than a commercial bank that offers a demand deposit service? A. No.

Q. Are you aware of any other financial institution in Georgia other than commercial banks which make available to the public the variety of loans that would be available at your bank? A. No.

Q. To your knowledge, from what institution or institutions do businessmen generally obtain the funds they need to operate their businesses? A. Well, they obtain these funds from stockholders, and they obtain the funds from creditors, they obtain the funds **[47]** from personal savings or personal monies or personal net worth; they obtain the funds from other people who make loans to them; they obtain the funds from—when I say "creditors" I mean suppliers, when I said "creditors" previously —they obtain funds from commercial banks.

Q. What type of loans does a commercial bank make to businessmen, or perhaps I could put it in this term: Is there any type of funding that a commercial bank does for a businessman to satisfy his credit needs, or would a bank be able to provide all the credit needs of a businessman? For example, you mentioned a businessman would get funds from his stockholders. Well, would the type of funding that a businessman gets from his stockholders be available from a commercial bank?

Mr. Doyle: I object to the question. First, it's phrased in terms of "would," which is on the verge of being hypothetical. It calls for speculation and it's objectionable on that ground. I object further on the grounds of vagueness. Would a business-

man of a type undefined, from a bank of a type undefined, obtain funds of a type undefined? It's so vague that I don't think it can be answered within the limitation it's framed in.

Mr. Kinkaid: I accept your objection, because——

By Mr. Kinkaid

Q. ——what I'm trying to get across to you, what I'm **[48]** getting at is a difficult question to ask in five or six words. For example, are you familiar with the term "working capital"? A. Yes.

Q. What does that mean to you? A. Well, it's the capital that the bank uses in its day-to-day operations—I mean that a business uses in its day-to-day operations.

Q. Now, would commercial banks—would your bank, for example, provide working capital to a businessman? A. I believe you're asking me do we make working capital loans, and the answer is yes.

Q. Do you make any other loans to businessmen which would not be categorized as working capital loans? A. Yes.

Q. What would they be? A. Well, we make longer term loans, term credit loans that can be money, that does go into the business on a more—for capital expenditures which would not be repayable from over a—on a seasonable basis but would be repayable from profits over a period of perhaps years. We could get in the area of real estate loans that would be payable [illegible] of income. It just depends—there are many, many kinds of loans that we might make.

Q. Does your bank make available to businessmen any type of credit which would not be available from another **[49]** financial institution? A. What do you mean by "financial institution"?

Q. Well, any institution other than a commercial bank which is involved with money. As examples, savings and loan associa-

tions, insurance companies, I guess credit unions. A. I would have to say that all commercial banks make loans that would not be at this time readily obtainable from savings and loan associations and insurance companies. And in that framework, my bank would be one of those.

Q. What type of loans do you have in mind specifically there? A. Well, just what I mentioned before. When you start talking about working capital loans or when you start talking about term credit loans or—well, those receivables loans, inventory loans; those kind of loans.

Q. To your knowledge, are those types of loans available from any other institution other than a commercial bank at this time—I mean to your knowledge, of course? A. No, not to my knowledge. I'm sure any kind of loan is available if a person would look hard enough and would have the proper credentials, from personal investors or a group of investors; just many ways. But generally speaking, we would be the institution—a commercial bank would be the institution that would handle those kinds of loans.

Q. Is your bank's ability to offer the range of services **[50]** that you have indicated earlier, is that ability of any assistance to you in attracting customers to the bank? A. Yes, very definitely.

Q. Could you tell me in what way that helps? A. Well, as I said, we have assistance from the C&S National Bank in relation to trust services, to payroll processing services, to pension and profit sharing services, to freight payment services, to charge account services, and it certainly enables us to take care of the customer, whereas if we did not have these facilities we could not do it.

Q. Are you saying that the ability, then, to take care of many needs of your customer is what helps you in attracting customers? A. I'm saying that it's certainly a very important factor

and that if we weren't able to take care of these needs we would certainly lose customers.

Q. Incidentally, to your knowledge would the services that you mentioned that you would obtain through referral to C&S, to your knowledge would those services be available from another large bank in this area? A. I would say that some of them would. I feel as though the C&S National Bank offers more of these and offers better service. I don't feel like you would get the same service that South DeKalb gets with another bank in the Atlanta area.

[51] Q. Let me understand you correctly, then. Are you saying that you could get the other services, that they would be available, but in deciding from whom to take the services, you would have to take into consideration the quality of the service that is available? A. I think that one of the most important factors would certainly be the quality, but I don't feel as though all of the services would be available. So my response would be that no, all of the services are not available at other banks that are available through the C&S National Bank.

Q. Could you give me any specific examples of those? A. Well, I could say freight payment would be an example that we could offer our customers that—to my knowledge, now—many of the banks don't handle. We have certain services in the pension and profit sharing; investment services, this kind of thing that I'm not familiar with other banks offering. Our charge account service is certainly unique. It's the only one, really, like it in the United States. And that's what the C&S National Bank offers South DeKalb. Those come to mind just readily.

Q. Would your bank's ability to offer these various services be of any assistance to your bank in competing with other financial institutions as to certain types of customers? A. Well, certainly the more services that you can offer provide you with a competitive advantage. If you can take **[52]** better care of a customer and you can take care of his needs, I think it's ob-

vious that he's going to come to you, as long as you are providing the quality service that is necessary, before he will go to someone else.

Q. Excuse me; I didn't mean going to another commercial bank. I meant going to an institution other than a commercial bank. I didn't make that clear. A. Let me have your question one more time.

Q. Well, would your bank's ability to offer a variety of services be of any advantage or assistance to you in competing for certain types of customers with financial institutions other than commercial banks? A. Well, I think it would be of an advantage. How much depends on many, many things. But to supplement my previous answer, I think that the more services you have, the better position you are in to compete with anyone.

Q. And if I understand you correctly, it's the number of services as well as the quality of services that is important? A. I think so, as long as they are services that are demanded by people within a certain area that you can serve.

Q. I think we have covered this to some extent, but perhaps we can sharpen it up a bit more. When you were at South DeKalb, who were your commercial banking competitors at that time? **[53]** A. First State Bank and Glenwood National, Bank of Georgia. Maybe you could perhaps include some of the Banks in Decatur, in the square, which would be First National and Fulton, I know; I think the Trust Company.

Q. Can you recall the closest office to South DeKalb of a member of the C&S system or another correspondent associate? A. Sure. I think the C&S Belvedere was probabiy the closest, and it was about 10 minutes away, I guess. I don't remember how many miles. I would say 10 minutes away.

Q. At that time was Belvedere a branch of C&S DeKalb?

Mr. Doyle: At what time?

By Mr. Kinkaid

Q. This would be—let's see, you started—— A. September of 1969?

Q. Yes, sir. A. I really don't remember. I don't think it was, but it might; I really don't know.

Q. Did you consider Belvedere one of your competitors? A. I considered them a competitor in the same sense that I would consider, when I was at the South Expressway Branch, that I considered the C&S Bank of East Point and the Stewart-Lakewood office branch of Atlanta and those people as competitors. I guess you would say they would be friendly competitors in that—but no different from what I would **[53A]** consider another branch of the C&S Bank when I was a branch manager. We always have had friendly competition.

Q. Do you have unfriendly competition with the other banks? A. I have on occasion. It would be more unfriendly than it would be with some affiliated with the C&S. Let's put it that way.

Q. Except for the element of friendliness, would the competition between South DeKalb and Belvedere be any different, from your standpoint, than the competition between South DeKalb and, let's say, Glenwood National Bank? A. Well, it would have to be different because I would consider Belvedere a member of the C&S family of banks, and I would certainly not hold them in the same light as I would someone who had no interest in the C&S Bank.

Q. If you can, as a practical matter, how would that difference work out in terms of the operations of your bank? A. Well, as I say, it would be the same as a branch. I certainly would solicit business from anyone at any place throughout the United States if I can get them to do business with me. But, in the same light, I would be more inclined to solicit and be more

aggressive getting business from someone who did business with the Glenwood Bank or one of the other real competitor banks than I would someone that is affiliated with the C&S Bank. I would not be as aggressive **[54]** in that area because I would use my efforts in trying to obtain that business that did not benefit the C&S.

Q. When you were at South DeKalb, did you have any understanding with C&S that you would in any way modify your competitive efforts vis a vis other members of the C&S system? A. Well, I just don't think that that was worthy of any comment at all. I didn't feel and don't—I just did not feel the necessity for competing on an aggressive basis with the C&S Belvedere Bank. I had as much as I could do to compete against the other banks there. I might add that the C&S Belvedere Bank would be of assistance with me rather than be competing, and I would be of assistance to them on occasion. We might mutually call on a customer, which has been done, and when one of us might not derive any benefit from it.

Q. Was that pursuant to any program of the C&S system, your mutually calling on a customer with, say, Belvedere? A. I could say any formal program; no, that just happens to be the way I operate. And when I was at South DeKalb, a good friend of mine was at Belvedere, and we were very friendly toward each other and still are.

Q. For example, in soliciting new business for your bank, would you or did you attempt in any way to coordinate your efforts with those of any other members of the C&S system or any other C&S correspondent associate? A. Sure. If I felt like there was someone within **[55]** my area that I could serve and serve better at my bank, and they had a relationship with Belvedere or had a relationship with the National Bank, and they were not doing business with the C&S South DeKalb Bank, I would use every weapon at my disposal to get those folks into the C&S South DeKalb Bank.

Q. But would you coordinate those efforts with Belvedere or C&S National? A. Not necessarily. I might, because many times in our busines when you are calling on a customer, it also involves credit. I have called on a customer before and he said, "Sure, I'll bank with you if you will loan me a hundred thousand dollars." And you have to take that into consideration. So one time you are a salesman, and the next time you are a credit man. And so we try to coordinate those kinds of activities. Also, I will have to say that on occasion I will coordinate with any bank because most people should not be banking—if they are credit customers they should not be banking with but one bank unless they are very large type customers, because you simply can't maintain proper control or understanding of their credits if they are spread out, and I have with the Belvedere, with the National Bank or with Glenwood National or with any bank. On occasion I have told the customer that he was going to have to bank with one bank because from a credit viewpoint we just simply could not keep up with his activities if he didn't.

[56] Q. So, so far as you're concerned, any coordination from your standpoint would have been in terms of finding out what this man's credit worthiness was and trying to keep control over his credit ability so far as you were concerned? A. Well, there are many kinds of customers. Some are credit customers and some are deposit customers and some are both, and I was just saying—you asked me a general question, and I was replying that there are occasions when you want to communicate and coordinate because they are borrowing customers, and if you don't, you may find out that he has just made a large loan at an institution, competitive or friendly or affiliated, and you might make him another large loan at the same time based on that statement, and both of you would be in hot water and he would be in Hawaii somewhere.

Q. What would be the reasons for coordinating on a deposit customer as distinguished from a credit customer? A. Give me that question one more time.

Q. Well, maybe I had better ask the basic question first. Was there any attempt on your part to coordinate your efforts to obtain deposit customers, coordinated with the members of the C&S system or any other correspondent associate? A. Well, not with a correspondent associate necessarily, but—and I didn't coordinate; if you say "coordinate," I did not coordinate ahead of time, necessarily, or communicate ahead of time. Now, I would on occasion, if the C&S National **[57]** Bank had information that could help me in making a call, I would get that, and that's a tremendous service that the bank offered us. But other than that, all I did simply was call on the customer. Now, I did report that normally in the form of perhaps just—I say "normally"; sometimes I would report it, sometimes I wouldn't, but I would report the name and who I called on and communicate in the form of a report, just a simple listing through the C&S National Bank. The reason for that is, quite frankly, the C&S National Bank worked with me in doing the best job possible, and I wanted them to know what kind of job I was doing out there, and I would report to them when I made these calls so they would be aware of the job that was being performed.

Q. Did they ask you to make those kind of reports? A. Yes—I mean when you say "ask," I did it when I was with the C&S National Bank, so I just continued doing it. I don't remember anyone asking me, but I did do it.

Q. To your knowledge, when you were there, at least, did South DeKalb have any loan customers who were located outside Georgia? A. I don't know. But it wouldn't be too unusual to have a few. I mean it could have happened. I don't remember any right offhand and outside of Georgia.

Q. Well, how about any personal checking accounts; can you recall any at South DeKalb who were outside the state? **[58]** A. Personal checking accounts?

Q. Yes. A. I might be misinforming you, but I don't recall any right offhand.

Q. How about commercial checking account customers; can you recall any—— A. Well, when you say "outside the state," now, as I understand it you mean they did not have an office there; they did not have any—if you're talking about home office out of the state, I would have to say yes. But now if you're talking about that had no establishment in our area, then I don't recall any.

Q. Can you recall any savings account customers—first let's take personal savings account customers located outside the state. A. Yes. Now, we had personal savings. I don't know how many now, but we did have some personal savings I know from Florida and maybe perhaps in some other areas. I believe we had some from Tennessee. But those were primarily the efforts of our directors. We had one director who was very aggressive in that area, getting business for the bank, and he got us some savings business, and I think I had a relative in Memphis, Tennessee that opened an account or two with us.

Q. How about on the certificate of deposit side; can you recall out of state holders of your CD's? **[59]** A. I just can't right offhand. No, I simply don't recall any.

Q. While you were at South DeKalb, did you have occasion to purchase any of these things that I believe are called "Federal Funds" or "Fed Funds" in the trade? A. I did, I think, very seldom, but I did on occasion.

Q. Let me make sure I understand "Fed Funds." Are those funds purchased, technically or actually, from another bank? A. They are funds that—yes, that other banks—I think they are handled—I don't know exactly how they are handled because I called the Bond Division downtown, and they are the ones that would handle this for me, but I believe they are funds that are pooled. When other banks have their excess funds that they don't need to meet the reserve requirements, they put those on the market, and they sell them from one day forward any number of days. And then you would have lenders

and you would have borrowers, and those banks who are not able to meet their reserve requirements because of loan demand or deposit shrinkage, then they borrow Federal Funds. And I believe on occasion we borrowed; not often but maybe once or twice we borrowed Federal Funds because we were short of our reserve requirements. I don't believe we put any in Federal Funds but——

Q. I was just about to ask you that. A. We didn't—we were working our money pretty strongly.

[60] Q. On the occasions when you purchased Fed Funds, can you recall the bank from whom they were purchased? A. I wouldn't know. I mean it's just a market, and, as I recall, what I did was I called our—and I say "our"; the C&S National Bank's Bond Division and told them I wanted to purchase whatever Federal Funds that I needed to make me meet our reserve requirements, and they did it for me, purchased it for me.

Q. To your knowledge, those Fed Funds that C&S National would be handling, would they be the excess funds of commercial banks in other states than Georgia or throughout the United States? Do you have any idea or not? A. I think they would be everywhere. I think it's just a market, and I'm under the impression—in fact, they keep up with how much is in the Federal Funds market, so it would have to be a national market.

Q. In terms of your bank's operation, is there any difference in your mind between the term "income" and the term "earnings," or are they the same thing? A. They're the same as far as I'm concerned.

Q. Okay, so I'll use "earnings," then, and it would mean the same thing as "income." From what source, or from what activity, if you prefer, does your bank obtain most of its earnings? A. From loans.

[61] Q. Would loans be the primary source of your earnings? A. Yes.

Q. Are there any other that you can think of? A. Oh——

Mr. Doyle: Now, wait a minute. What's the question?

By Mr. Kinkaid

Q. From what activities of the bank—— A. The primary source of earnings?

Q. The primary source of the bank's earnings. A. And I said loans.

Mr. Doyle: How can you have anything else if you're asking him about "primary"?

Mr. Kinkaid: Okay; all right.

By Mr. Kinkaid

Q. Is there any other source that's not primary from which you also derive earnings? A. We derive earnings from service charges. We derive earnings from bond income. We derive from other income. We derive it from fees.

Q. Now, what would be the source of your bank's—the money that your bank uses in making the loans which you have identified as the primary source of your earnings? A. From depositors and capital.

Q. Would capital and deposits also be the source of the other activities from which you also derive some earnings? **[62]** A. Not necessarily. It could be related. It's all related, but I would say that you can have—people come in to buy Travelers Checks, for instance, that have nothing to do with deposits.

Q. Has your bank ever been in the position where it could not make additional loans because of the lack either of capital or deposits? A. I would say the answer to that would be no, that it's never been in the position where it could not make

additional loans. My bank is in a fortunate or unfortunate position, depending on how you look at it, where they have a tremendous loan demand. I think it's a very fortunate position, and, of course, what we try to do in a case like that, there are lending areas and there are deposit gathering areas in cities, primarily in cities, and what you try to do is if you are a deposit gathering bank you try to increase your loan activity because your deposits come rather freely. And you don't forget your deposit activity, but you try to increase your loan activity because you can maximize profits that way. And the converse is true, too. But I would say this, I don't think that any time that we've had a good loan request, a bona fide loan request, that we couldn't either handle it at South DeKalb or see that it was handled. We would not turn the customer away. We might use our sister banks. We might refer them to a sister bank. This is what I [63] mean. We might do that or we might ask the C&S National Bank to participate or to buy off some of our loans. But I don't think a bona fide good customer would be declined, not to my knowledge.

Q. If you put aside the opportunity to refer the customer or to participate on his loan request, in that sense have you ever been in a position where you could not make a loan because of lack of capital or lack of deposits? A. Well, I've never been in that position. I've always been able to make a loan if I thought it was beneficial to the bank. I've had tremendous assistance from the C&S National Bank in this area.

Q. Is that something that could happen or is that just a fantasy? A. Oh, it's possible, yes. If you don't have an affiliation, you can have a real problem here. There's no doubt about it. If you did not have an affiliation and you had more loans than you had deposits, you couldn't do it. You have a guide; we try never to normally get over 80 percent loans to deposits. That's just a guide; that's no regulation. And most banks are much more conservative than that. But this happens to be my guide, let's put it that way. Because if you have that

kind of loan to deposit ratio, depending on where you're located, you can maximize your profits.

Q. What would happen to a bank in the situation where **[64]** it was lacking the deposits to make additional loans? What impact would that have on the bank's operations? A. And it was not affiliated with the C&S National Bank?

Q. Or not affiliated with anybody. A. Well, it just couldn't make the loan. They would just have to say, "I can't make it. I don't have the money," just like if you don't have money in your pocket and somebody wants to borrow money from you, you can't make the loan. That's what happens. You would have to go out and raise additional capital or raise your deposits or make some of your other loans pay off. Now, you have the alternative, if you have a real good prospect come in, you could say, "Look, I'll make you this loan," and you have some other loans over here that, if you wanted to, that were people that were not as credit worthy, you could require them to come in and pay off, if the loan were on a demand basis or something like that to pay it off. But that's very—I have never been a party to that, and I don't believe that I would be very inclined to do that.

Q. How would the bank go about raising the additional capital on deposits to meet that situation? A. Well, you can sell stock. You see, if you have a loan demand like that, it's obvious that you have a very profitable situation, so you can raise—I say you can; I would think you could raise additional capital to put in the **[65]** bank. Another way that you can increase your liquidity—which is what we're talking about—is not trying to sell loans so hard. You know if you don't try to sell them, if you don't try to sell, for instance, installment loans, then they will run off, and when they run off you have an increase in liquidity, and you can handle them. This is what management of a bank is all about. And, of course, you have investments that are supposed to help you in this area,

so you can sell investments, too, and that's a secondary market to increase your liquidity.

Q. In that same situation, how would you go about trying to increase your deposits to support the additional loan activity? A. In that same situation where I'm not affiliated with the C&S National Bank?

Q. Or, as I said, any other bank. A. Okay. How would I try to increase the deposits?

Q. Yes. A. Well, I would look over my stockholders and see who—there are any number of ways. I would put on a program to try to, from a new business point of view, to try to increase savings. I would do that by working through my employees, by having an employee contest or competitive situation. Then I would work through my stockholders, sending out letters or calling them and asking them to support us. And then I would **[66]** work through my present customers by cross letters, cross selling through letters, writing your loan customers and asking them for deposits or writing your deposit customers and asking them for more deposits and then go through my prospect list, and that fellow that has been promising me but hasn't been coming in, I would go see him. Okay?

Q. Okay. A. Do you think I would get them?

Q. I think you would. Would you in that situation be not trying to get all kinds of deposits—by that I mean both time and savings deposits as well as demand deposits? A. I would be, but if I have a loan situation I'm a little bit more interested in time deposit money than I am in demand deposit money, because demand deposit money is going to stay with you longer. So I would be more interested in that, although I certainly wouldn't turn down any demand money.

Q. Would one way to get the additional time money be to increase the interest you're paying on time deposits? A. You could do this, yes, but I'll tell you, I normally don't—and this

may be incorrect—but I don't normally put as much emphasis on price as I do on service. You could increase it, but I think if you go out and ask for the business, you could probably get it a little bit quicker, **[67]** maybe. I mean that could be debatable.

Q. Are you familiar with the term "primary service area" or "primary trade area"? A. I wouldn't say that I'm familiar with that term. In any business I think you have an area that you consider the most lucrative area for you to cultivate.

Q. At the time that you were at South DeKalb, could you estimate the area around the bank from which you would have obtained, say, 75 or 80 percent of your deposit accounts? A. When I was in the day-to-day operations of the bank, I had an area that I felt like would be convenient—when you get too far from your bank, then it becomes an inconvenient factor for the customer and it becomes a little bit more difficult, but this does not rule out that you would have customers in other areas. So I can't give you a boundary for a primary area, although I think it would be normal for me to—and it would be true for me to say that when I got out too far that I didn't have the same benefits and convenience to offer the customer as I did closer in.

Q. How far, roughly, would you have to go out before you lose that convenience factor? A. Well, it's difficult to define like that. I don't know; I mean if you've got—you might say, "Well, you've got another bank here, so I'm not going to call on the fellow that **[68]** is in business right next door to that bank because he certainly is not going to come two and a half miles down the road to me when he can step right next door." But if the other bank—or it could be another type of institution—if they are not taking care of that customer and not serving him properly, then I have been there and I have been able to get some business in that manner. And then, also, sometimes having customers outside of a particular area has to do with the type of service you provide. And I've had customers that do

business with me because of that. I've got some customers now —we're talking about areas—that do business with me in Milledgeville that live in Atlanta and borrow large amounts of money and also have deposit accounts with me and are very, very fine folks; not marginal, but I mean good customers, and it's strictly because I've taken care of them over a number of years.

Q. Is this convenience factor you mentioned, is that important only to deposit customers or is it also important to other types of customers, particularly credit customers? A. Well, here again, I think a customer or a prospect is interested in convenience. It certainly is an important factor. It is not the only factor to a deposit customer nor to a credit customer. There are other things that are important also.

Q. Would there be more things important to the credit customer than would be true for the deposit customer?

[69] Mr Doyle: I object to "the credit customer" because you are talking about a construct that I don't know the dimensions of. You are obviously talking about some sort of a hypothetical, and I don't know which hypothetical item you're talking about.

Mr. Kinkaid: Well, the same one that Mr. Berry has been referring to in our previous discussion. I don't know if you heard it all, but——

The Witness: Well, I think your deposit customers and credit customers are one and the same in many instances, and it's hard to distinguish one from the other. One might be a credit customer and tomorrow he might become a deposit customer. One might be a deposit customer and tomorrow he may become a credit customer. So it's very difficult to really distinguish one from the other.

By Mr. Kinkaid

Q. Within the area, the convenience area that you mentioned a few minutes ago, thinking of that area in a geographic sense, could you estimate the percentage of your loan customers who were located within that area when you were at South DeKalb? A. I just simply could not—the only way that I can say anything about an area there that would be considered the most lucrative area would be to say that the majority of business would normally come from people that are convenient [70] to the bank. But to continue this bit of information, I would say that we had customers—I can think of a customer that we handled some development, building, construction loans and all, for down in Henry County. We had another fellow that did business with us, the treasurer of a local company, who is located down on Lake Spivey. So I know, as I mentioned to you in our casual conversation, we handled the financing of a Little League ballfield right over in Sandy Springs. So I really don't have a definite boundary line or area or this kind of thing that I referred to. To reiterate what I previously said, I think that in the managing of a bank, you think of a particular area as one where you would derive most of your business, but I can't define the geographical location or boundaries of that area.

Q. Are these two or three loan accounts that you just mentioned—the one at Lake Spivey and the one at Sandy Springs, et cetera—were those—did those accounts involve relatively large amounts of financing, to your recollection? A. Yes. The one at Sandy Springs I don't remember how much, but it was considerable. When you say "large," how much—what are you——

Q. Well, excuse me. I was just about to ask you whether you in the operation of your bank ever have occasion to refer to your customers as "large" customers or as "small" customers, or do you use terminology like that? [71] A. I might use it in discussions, but with no meaning at all, and it's a very difficult thing to define. I don't know, really, what you mean when you say "a large customer." I'm sure we could take it to the ex-

treme and say someone who borrows a million dollars is a large customer and so forth, but we might not be communicating in that area. To me, the loans that were made in all three of these areas would be large loans. They would be in the several thousands of dollars category and not in the hundreds of dollars.

Q. Would you consider someone who borrows under a hundred thousand a small customer or a large customer? A. I would say that would be—it depends—in other words, I could not use a hundred thousand dollars as a cutoff. I would say a hundred thousand dollars would be large to me; fifty thousand dollars would be large to me; twenty-five thousand dollars would be large to me; ten thousand dollars would be large to me. I think when you get on up into—and then it's relative again. On the other hand, relating to certain types—and I'm not trying to be evasive here—but relating to certain types of loans, a hundred thousand dollars might be small. For instance, if somebody wants to make an apartment development type loan or a residential development type loan, a hundred thousand dollars is small. Or if somebody wants to put up a medical building, a hundred dollars is small, we've got to talk about a half a million. It just **[72]** depends on what we're talking about. But if an individual comes in and wants to borrow $10,000, then that's a large loan, if it's just for a personal type loan.

Q. Well, at this point let's limit our discussion to commercial loans as distinguished from personal loans. Did you have any small commercial loans any distance from your bank, say Sandy Springs or Lake Spivey, to use the examples you gave us before? Can you recall having any small commercial loan accounts say in Sandy Springs or as far away as Lake Spivey? A. When you say "small," here again are you using my definition?

Q. Yes. A. You're saying below $10,000?

Q. Yes. A. No, but I'm sure we did—well, yes, I can remember one that a fellow finally got in financial trouble on. But I did handle a little finances for him. He worked out at

Lockheed, personal type loan; automobiles and this type thing. Finally went in business for himself and had a problem. But yes, this would be one. It ended up in a large loan, but when we were handling it previously, it was a small loan.

Q. Now, to your recollection would that have been the exception? A. Well, when you say "exception," I think—as I've [73] stated before, I think the majority of the customers would be in the area that the bank primarily serviced, which is a little difficult to define.

Q. In terms of within that area that—well, we're not trying to define it in specific terms, but within that area which you have been referring to, among other things, as the convenience area, would the closeness to your bank involve any factors so far as the commercial customer being able to do business with your bank is concerned? Would his closeness to your bank be a factor in any sense other than strictly convenience? A. I don't understand what you're asking.

Q. Maybe I can ask it a little more naively, perhaps, but so far as credit worthiness is concerned, your ability to decide whether this loan, this prospective loan customer is a good credit risk, would be a good loan for your bank to take on, does distance create any problem in terms of determining whether this prospective loan customer is a good account? A. Distance can be a factor as well as many other factors, but if you have distance, then obviously you don't see the customer as often as if he were next door, because it is not as convenient to him. But that would be one of many factors, and in any credit decision you have many, many, factors to consider, and nobody makes a hundred on all of them.

[74] Q. The farther away he is from the bank, does he become less familiar to you in your day-to-day operations? A. No, not necessarily. I mean I would say this, if he is near the bank, he has the opportunity to come in the bank, because it is more convenient to him, more often. But the further he is away would

not—in other words, you couldn't say that because someone is 10 miles away, he's got this kind of credit factor; because he's a hundred miles away he has a lesser credit factor I would not agree to that. I would say that if a man's nearby, it's more convenient for him to come in, and that certainly is one of several factors that you would consider, because at least you see him more often.

Q. Did South DeKalb have a loan committee or finance committee? A. Yes. I don't recall whether we called it a loan committee or an executive committee. And we still have this committee, (but I don't remember whether it's the loan committee) or the executive committee.

Q. What would be basically the function of this committee? A. Well, this committee would review loans in excess of 10 percent of the capital and surplus in the bank.

Q. Would that be it? Would there be anything else? A. No, that would be about the extent of it.

[75] Q. Did you have a committee at South DeKalb that was involved with deciding whether to approve a particular loan request? A. As I just said, this committee has to approve any loan that is over 10 percent of your capital and surplus——

Q. Excuse me; I thought you said "review." I thought that meant the loan has already been approved, and that's simply reviewing it. A. Well, I think we've got a question about terminology here. They have to—in effect it has to be approved at one time or another by this committee. Whether or not it is approved subsequent to or prior to is a different situation. This committee has to be communicated with because of law, and it does have to be approved at one time or another. It could be subsequently, but it does have to be approved by this committee.

Q. Are there any loans—or were there any loans made by South DeKalb that were reviewed by anybody at C&S National

or Holding or any other member of the C&S system? A. Well, when you say "reviewed," we have credit meetings on a weekly basis where we got the benefit of the thinking of various individuals, and we would have affiliate, 5 percent affiliate banks and affiliate banks and branch banks, managers and presidents, as the case would apply, get together and discuss various loans that had been made during the week—[76] and I don't mean every loan but large loans and this kind of thing—to try to seek the benefit and help of the other individuals involved. Some could offer more, depending on their experience.

Q. Did you have any meetings specifically with respect to South DeKalb loans? A. The only type meetings that we had that I can recall specifically relating to South DeKalb loans would be—I believe that we employed a credit auditor to come out and audit our loans for the benefit of management and the directors. And so we discussed his particular summary of his audit. I don't remember the details. We might have had a couple of these. But we do use this normally. I use it at the bank I'm at now. It's very helpful as a management tool.

Q. Was C&S or any personnel of C&S involved in the approval of loans made at South DeKalb? A. No. I've never had anyone that had to approve loans that we made, if this is what you mean. We've communicated and we've asked for assistance, but we made the loan with the assistance of our board of directors.

Q. Did anyone from C&S ever direct you not to make a particular loan at South DeKalb? A. No, not to my knowledge. I have never been directed that I can recall. Now, it has been—I've asked for help and assistance, and I have been—things have been pointed [77] out to me; points have been made related to a loan that would indicate that it would cause me a problem, and I, in effect, have made a decision whether or not to make it. But loans are not made by people at the National Bank for South DeKalb, fortunately or unfortunately.

Q. Were you ever directed by anyone at C&S to make any particular loan at a particular rate of interest? A. No. No, not to my knowledge. I might mention in relation to making loans, even when I was with the C&S branches when I was a branch manager. I made my own decision and made my loans. So, I didn't communicate at that time until after the fact.

Q. When you were at South DeKalb, did you receive any suggestions from anyone at C&S with respect to the interest rate on a particular loan? A. Any suggestions?

Q. Yes. A. No, I mean normally it would be the other way around. I would ask for help many times, not just from C&S National but from C&S National sometimes and from other parties to try to establish, as I mentioned earlier what kind of rates should be charged on a particular loan, to take into consideration the servicing factors and the interest rates. Many times, like on a receivables loan, you have a blanket type receivables loan or you can have a specific receivables loan or you can [78] have—you get into an inventory loan, how you are going to audit it or how you're going to check the aging on your receivables, who's going to do it, and many times I would use the C&S Bank to service these loans. And on some occasions we would have to communicate to see what kind of charges they were going to make me pay to have them check the receivables and this kind of thing.

Q. We were talking earlier about the earnings of the bank. Generally speaking, what is done with the earnings of the bank, or what was done with the earnings of the South DeKalb Bank? A. We put it back in the capital and undivided profits—not in the capital accounts but in the net worth section but under the undivided profits accounts so we would have a little bit of money to use and then try to help that bank.

Q. Did you, while you were there, pay any dividends to the stockholders at South DeKalb? A. No, unfortunately I didn't.

Q. While at South DeKalb, did you receive any services from C&S National for which South DeKalb did not pay C&S National? A. Did not pay C&S National? Well, as I mentioned, advertising; we got the benefit of it. It wasn't a direct thing, but being in metropolitan Atlanta we had the benefit **[79]** of it; primary services we would receive along those lines. Well, I would have to say yes, we did. And here again, when I say "I would have to," that's just a manner of expression; I would say yes. We had a big help from the C&S National Bank in constructing that branch. I'm not very talented in that area, and I asked for assistance, and the Property Division came out and helped me very much in being sure that that bank was constructed properly and in the right manner. That would be one area. Advertising would be another area. Many times we need assistance in relation to loans, how a loan should properly be documented or what kind of information might help us in trying to make a decision. And certainly I couldn't know all the answers and don't profess to and would ask for this kind of help. This is of tremendous help to us. I can't emphasize this too much. And the C&S Bank has just many different areas that I could communicate with and it would help me in a professional manner, arrive at a sound conclusion for my customers.

Q. Outside the area of advice that you just mentioned, did you receive any services from C&S for which you did not pay? A. Well, outside the ones I've mentioned—I don't have a listing of them right now. I can't think of any specifically, but I think that the advice and help that I got was just tremendous. I mentioned, I think, personnel. I don't believe **[80]** I paid for that. As a matter of example, I believe they helped me in that area of assistance in interviewing personnel, and also the C&S National Bank had what they called a "Traveling Team." This is just coming to mind with the question you asked. They had a "Traveling Team" whereby when banks got real short on personnel, experienced personnel, they offered us the assistance of having someone from this team come in who was experienced,

and our system, of course, was so similar to the National Bank's system that they could come in and help us. And we paid these people. But still, to have that kind of person available, if you were not affiliated with the National Bank you certainly couldn't. One day when you have too many people out for one reason or another, have assistance in that area. Those things come to mind right off the bat.

Q. Well, let me ask you this, did South DeKalb maintain a demand deposit account at the National? A. Yes.

Q. Was that in the nature of a correspondent balance, if that's the correct term to use? A. That's correct; it would be a correspondent bank account. Yes.

Q. What was the purpose of that correspondent account? A. Well, to clear our checks drawn on other banks. We would clear them through that account, and then the C&S National **[81]** Bank would collect them.

Q. Was any correspondent balance maintained at C&S National or any other C&S affiliate for the purpose of paying for services provided by National or an affiliate? A. No. We had one account at one time; I don't believe that we still have it. It was so small; I mean it was really a small account that I don't believe it would be of any significance, that we had at the C&S Emory Bank, and maybe it had, I think, $25,000 in it. But I don't even believe that that's—it might be, but certainly it wouldn't have anything to do with any connection with any services or anything like that.

Q. To your knowledge, is the maintenance of a so-called correspondent balance the usual way of paying for correspondent services? A. Well, I think this, that if you had a large balance in a bank account that the bank wouldn't necessarily tend to send you a bill for services rendered. I think it would depend on the type account you had, really, more than anything else, the type of account you had and how profitable it was to the bank.

Q. You mentioned that while you were there all the earnings

of South DeKalb went back into the bank, so to speak. Did any of your South DeKalb earnings in any way end up in C&S National? [82] A. No.

Q. Would there have been any way in which any of your earnings could have ended up in C&S National other than if you had paid a dividend and C&S would have received a dividend would have received a dividend on its 5 percent stock interest? A. Well, I don't know whether there would be another way or not.

Q. When you were at South DeKalb, were you aware of what, say, C&S National and C&S affiliate banks and other correspondent associates were paying on savings accounts or charging for checking account services? A. Yes, sir, generally.

Q. Generally speaking, how did you become familiar with service charges and interest rates applicable at other correspondent associates or at C&S National? A. Well, I also knew what the service charges, generally speaking, and the interest rates, generally speaking, were at not only at the C&S but also at the competitors. You just have to know what other people are doing if you're going to be competing with them. And so I knew that about competitors, and I think also that—of course, I was brought up through the C&S National Bank, and certainly I had to be familiar with its service charges through my experience and also with the affiliated banks, too. We would have customers, for instance, that would come in the bank at South DeKalb and want us to [83] straighten out their checking account which was carried at the C&S Belvedere Bank. So it was very simple that you just had to find out what the situation was and how they were handling it. And many times we would service a customer, even though it was with an affiliate or another bank.

Q. Can you recall whether or not your service charge on checking accounts and interest rates on personal savings accounts at South DeKalb were the same as they were, say, at

Belvedere? A. There could be some difference. I think generally they were the same because we were really in kind of the same market area. But, as I mentioned previously, at C&S Milledgeville we've got differences just in several different categories because we've got a different market area.

Q. Does it make any difference to you as president of South DeKalb whether or not your interest rates and service charges were the same or different from Belvedere, as an example? A. Well, I didn't—I mean Belvedere didn't make that—I didn't adjust my interest rates and service charges related to what Belvedere did, quite frankly. I didn't contact Belvedere and ask them what their rates were before I would make a decision on what I was going to do at all. I think that what the competition does, though, or what anybody does, I have to be apprised of that kind of information. If I don't, **[84]** I've got a problem.

Q. So far as competition for loans is concerned, has it been your experience, particularly since you were at South DeKalb, that the interest rate that you would charge on a loan would be the only competitive weapon that you would use, or would there be other weapons, if I may use that word, that would be available in competition for loans? A. Well, I'm not real happy with your word, "weapon," but we'll live with it; it sounds like we browbeat our customers. But I do think that there are many considerations when you are talking about a credit other than rate. Rate is a factor, but it is one of many factors, and I really feel like that a customer can sense when you are looking after his interests, and that doesn't mean rate; it might mean repayment schedule. It might mean loaning a guy enough money to handle his situation. I look at banking as a profession, and we are really in the banking business—we should be experts in our field, and to be an expert in your field, really, price and rate have to be or should be, if it's a complex field like banking is—and anyone who doesn't agree with that really doesn't understand very much about banking—in a complex field like this,

pricing and interest rates are secondary to handling the request or the business in a professional like manner and looking out for the customer's interest.

Q. Looking at the same sort of question with respect to **[85]** the personal savings account, insofar as personal savings accounts are concerned, would the interest rate be the sole factor that you would use in trying to attract those type of accounts? A. I think that interest rates on savings are an important factor. It's not the only factor, and it depends on the type of account you are referring to. If you are referring to a regular savings account which is one that you go in and out of and the interest is computed on a periodic basis, I think the interest rate would not be so important. That's a rate for a smaller type account, one that you really use to keep the money aside. I think when you talk about money that someone is really going to—or savings that someone is really going to put money into over a long period of time and this kind of thing, then rate becomes a more important type consideration. And that's the reason I wish you would encourage the authorities to allow us to pay more on regular small savings, personal accounts.

Q. I think you mentioned Monday meetings where everybody from all banks—associate banks, affiliate banks—everybody got together on Monday, I think you mentioned. When you first became president of South DeKalb, did you immediately start attending those Monday meetings, or did they start at some other time? A. Well, let me clarify that because I think I did say **[86]** "Monday meetings." That day might be incorrect. I don't remember what day it was, really, but once a week, generally speaking—and this is not always, but once a week, generally speaking, a group would get together and discuss the credits, larger credits, that went through that particular week, and I did this when I was a branch manager, and I did it for years with the C&S Bank.

Q. Do you recall the "Goal Post Review Program"? A. Yes.

Q. Can you recall when the "Goal Post Review Program" started? A. No, I can't. I'd say three or four years ago would be a guess.

Q. Was it in existence when you started out at South DeKalb? A. I simply don't remember.

Q. Was there any other regular contact or contacts you had with the C&S personnel other than the meetings you mentioned a little earlier and the "Goal Post Review Program"? A. When you say "regular," occasionally. I don't know of any regular meetings that would be applicable here. Normally a group of the C&S presidents and branch managers would get together at the bank employees' place up at Allatoona once a year. We would get together and meet and discuss mutual problems and have a social with the wives and **[87]** this kind of thing. But I don't recall any specific, routine meetings like that.

Q. The "Goal Post" meetings, were they on a regular basis? A. Yes. As I recall, we got together maybe quarterly.

Q. Was your specific attendance at either the "Goal Post" meetings or the other meetings that occurred on the day that you can't remember, was your attendance at any of those meetings mandatory? A. Well, I don't know that that would be the appropriate term. It was by mutual consent and agreement, and I was never told, that I can recall specifically, to be at a meeting. Our group met at a certain time, and I just was included in that group and was there. And in relation to the "Goal Post" situation, this was just a management tool to try to do the best job for the community and for the bank. And so this is just one means of management by objectives, which is the professional approach to getting the job done.

Q. Did you make any reports to the board of directors on your meetings either with respect to the "Goal Post Program" or with respect to the other weekly meetings? A. When you say "reports," I had no obligations to report to my board in relation to these two type meetings, but I normally made it a practice to

report to them. This was a management function, and I normally wanted them to know how we [88] were performing. I did let them know and communicate with them in relation to what I thought the goals ought to be and how well we were doing. So perhaps this would be the answer to your question. I did keep them informed as to what our goals would be and how we were meeting those goals. But I did not report to them technically on any meetings that I had with any particular parties.

Q. That's really what I meant. Did you—— A. Kept them informed; yes.

Q. Kept them informed of the results? A. Yes.

Q. Did you keep them informed or did you make them aware that you were meeting with C&S personnel? A. Well, I think the directors knew that C&S was helping the management of the bank in performing the service to the community. I don't think there was any question about that on any of the directors' parts, that we were using their assistance.

Q. To sort of go back and recap some areas that were discussed a while ago, when you were at South DeKalb, did you have the authority to decide what the interest rates on your savings accounts would be, what the service charges the bank would charge on checking accounts and the like would be; was that within your authority to decide? A. Yes.

[89] Q. From whom did you get that authority, or did somebody give that to you? A. Well, I didn't, like anything else related to that bank, I didn't ask anyone for it. Being president of the bank, it's my job to run that bank, and it's just self-explanatory. The directors elected me president of the bank, and certainly as such I assumed the authority and the responsibility to determine what kind of prices we ought to charge, what kind of interest rates we ought to charge, what kind of service charge we ought to charge and everything else. I many times would keep the directors informed when I felt like it was

to their interest but not always. I did not bother them with a lot of details.

Q. Well, what I meant actually was when you were selected by the board as president, did they make it clear to you that you had the authority to make these decisions, "Just keep us posted"; is that—— A. Well, I assumed that authority, and to me it was clear. You will have to ask them if it was clear to them. I can't answer for them, for the board. I think it was.

Q. You may also in bits and pieces covered this, but in general terms, in exercising this authority as to interest rates, service charges, et cetera, what were the factors that you took into consideration in actually exercising it? A. In determining what kind of interest rate—we're **[90]** talking about loans now?

Q. Well, on any of these; in other words, if I understand you correctly, you had or at least you felt you had the authority to make the decisions on interest rates and savings account service charges and checking accounts. In exercising that authority, what were the things that you took into consideration in making decisions? A. Well, on checking——

Mr. Doyle: Excuse me; off the record.

(Off the record discussion.)

By Mr. Kinkaid

Q. I will rephrase it another way. To put it a different way, in making these decisions did you take into consideration anything other than the competitive posture of your South DeKalb Bank? A. When you say "competitive posture," I don't understand what you mean.

Q. All right, did you take into consideration anything but the well-being of the South DeKalb Bank? Is that a better way to put it? There are many different ways that I can think of. A. Did I take into consideration anything other than the well-being of the South DeKalb Bank?

Q. Right. A. No. The community, but that relates to the well-being [91] of the South DeKalb Bank.

Q. In making these decisions, did C&S ever dictate to you what your decision should be with respect to any of these matters, service charges, interest rates on savings accounts? A. No.

Q. So far as you were concerned, did C&S have the power to dictate to you with respect to any of those decisions? A. No. As a matter of fact, I really feel like that if I had felt that it would be to the benefit of the South DeKalb Bank to change those that I would have done it.

Q. While you were the president of South DeKalb, did you feel in any way that your activities as the president were controlled in any way by C&S National? A. No, I would not—I did not feel like they were controlled. I felt like and do feel like that the C&S National Bank does influence me because I respect their knowledge and experience and background.

Q. We have received from C&S a whole stack of documents that would take about six hours to go through. Let me just show you—just take a quick look at two or three of these. A. Okay.

Q. What I want to ask you is this: Now, some of these I'm showing you may be dated after you left South DeKalb—— A. I think all of them are.

[92] Q. Those particular documents I showed you were addressed to branch managers, presidents of affiliates, presidents of correspondent associates; is that correct? A. Well, one of them, I think, is just for information purposes here, and the other one is addressed to presidents and so forth, branch managers, affiliate presidents, and this one is addressed to specific individuals.

Q. Now, do you recall when you were president of South DeKalb receiving documents similar to these that would have been addressed to branch managers, presidents of affiliates,

president of correspondent associates? A. From time to time we did receive information like this, yes.

Q. In some cases these documents appear to have been directed by Charles A. Pfaff, vice president? A. Right.

Q. Others—Who would have been some of the other people from whom this type of document would have come to you? A. Well, probably these would all have come from an area of the bank known as the Branch Supervision Area, and they supervised the branches in the Atlanta area and worked with the—and really supervised the affiliated banks, but the correspondent associates, they worked with those banks.

Q. Okay, so I think we have pretty well identified the **[93]** type of document that we're talking about, using these just as samples? A. Right.

Q. From your standpoint, what was the purpose of these documents being sent to you, specifically? A. Well, I think primarily it was a communications device to let me know what other banks were doing and to be a helpful management tool.

Q. To your recollection, did some of these memos of this type contain suggestions as to things like interest rates on loans? A. We had a document that came out from time to time that would have a variance in rates; it wouldn't put a specific rate down for a specific loan, but it would be a guide that you could use to have an idea of what would be an appropriate rate.

Q. Well, I don't think I understand when you say "not a specific rate." A. Well, let me clear it up this way. There's no way to indicate what a specific rate on a loan will be. As I have indicated previously, it's just more involved than—there is no way for one person to insinuate or much less to try to dictate any kind of rate, and this simply would not be the case. As a matter of fact, we have discussions within the bank, the C&S Milledgeville Bank now and the South DeKalb **[94]** when I was there, between bank officers as to what an appropriate rate would be, and we would have information like this about what would

be a guide as to a rate and still have considerable discussion, and many times our rates would differ from what any guide would be, because it involves the relationship of the customer to the bank in other areas, what kind of deposit account he has, what kind of credit background he has, what kind of collateral he's going to use, what kind of net worth statement he has. And you have to consider all of these things to try to come up with an appropriate interest rate.

Q. What I meant by—when you said they were intended as a guide, not specific rates, what I had in mind was that you couldn't have—or could you have a guide without having specific rates? A. Yes. You could have a guide without having specific rates. You could say, "Real estate loans, the interest on real estate loans in the market today is fluctuating between 6 and 8 percent." You could say, "The best rate is normally running 6½ to 7 percent," or something as a guide. So you wouldn't pinpoint a specific rate for a specific loan, but you would give an idea or an indication of what the market was doing.

Q. That's what I meant, but in giving that as a guide, you still mention specific numbers; in other words, I just **[95]** want to make sure I understood what you meant by "no specific rates." You still have to have some kind of numbers? A. You would have some kind of numbers; that's correct.

Q. And if I understand you correctly, so far as you were concerned, these memos were intended as a guide; is that correct? A. Well, to keep you informed, just like The American Banker comes out and on a day-to-day basis tells you what the discount rate is or what the bond market is or what the treasury bill rate is. And this is just another means to try to keep up with what various rates are.

Q. For example, this one dated May 11, 1972 from Mr. Pfaff informs that the best rate is 5 percent as of May 8, 1972, and this goes on to say, "Unless you are notified otherwise,

please continue to use the commercial loan rate chart dated April 17, 1972."

So far as you are concerned, would that have been a suggestion to use or to follow the loan rates that had been set down in a particular chart? A. Let me tell you this, Charles Pfaff would not tell me what kind of rate to charge on a loan. Does that answer your question?

Q. Well, would anybody else in C&S tell you what rates to charge on loans? A. No, they would not tell me what rate to charge on **[96]** loans.

Q. Now, he does say "please," so could that have been a suggestion?

Mr. Doyle: I object. You have asked him innumerable times this afternoon that question in different ways, every different way, and he has told you every time the same thing. And I object on the grounds of repetitiveness. It's not getting us anywhere. I think it's insulting that a question has to be asked again and again and again and again, and I take it as insulting and insultingly intended to this bank officer.

Mr. Kinkaid: Now, Mr. Doyle, I'm trying to go through a whole stack of documents which ordinarily would take a great deal of time, and I'm trying to accommodate Mr. Berry so he can get out of here at 3:00 o'clock, and if it sounds like I'm being repetitive, it may very well be, but I'm being repetitive in order to accommodate him.

Mr. Doyle: I don't understand repetition to be accommodating. The question of whether or not he has been told by C&S National Bank what to charge on rates has been asked and asked and asked and answered and answered and answered. And I don't see that we can get anywhere by continuing that kind of repetition.

Mr. Kinkaid: Many of these documents would appear to contain suggestions. Now, if I could go through 50 of them **[97]**

one by one, we could reach proper determination of the thing. I'm trying to telescope it so we can get it over with, and I'm trying to see if, from his standpoint, he would interpret these as being suggestions. This is simply all I'm asking the man.

Mr. Doyle: Well, let's telescope it. Let's get on with it.

By Mr. Kinkaid

Q. Can you recall getting documents of this type, which, so far as you were concerned, contained suggestions on things like interest rates or banking hours? For example, this one of November 17, 1969 from Mr. Mathis and Mr. Ingram relate to drive-in banking hours, and this indicates that, "We have been experimenting for some time at several offices with keeping our drive-in windows open until 4:00 o'clock. Let's plan to start keeping our drive-in windows open until 4:00 o'clock at every location just as quickly as this can be arranged."

Now, what I'm asking you is, first of all, does that document contain a suggestion as to drive-in banking hours? A. I would say that it does. I don't know whether the term "suggestion"—it would be a guide. I look at it as though it were a guide. If we are saying that that would be in the same framework, then I would agree. This does not and **[98]** would not dictate to me that I would have my drive-in window open until 4:00 o'clock. If I didn't agree with this, then I would handle it in the manner that I thought that would be best for South DeKalb Bank.

Q. Can you recall, as a matter of fact, in this particular situation whether or not you did keep your drive-in windows open until 4:00 o'clock? A. I believe that we already had them open until 4:00. I don't think that meant anything one way or another to the South DeKalb Bank, to be honest with you.

Q. With this particular guide—we'll use that work—with this particular guide as a sample, where you received similar guides on various matters, what is your recollection as to whether or not you generally followed them, or can you recall? A. I generally did, and the reason for that would be that—and, as I say again—

is that the C&S Bank is a real asset and a real asset to the South DeKalb Bank and a real asset to the Citizens and Southern Bank of Milledgeville, and when they came forth with a guide or a suggestion, I generally gave it and do now give it importance because I feel like they know what they're talking about. If it's going to benefit my bank, no matter where it comes from, I want to give it significance, and I think the C&S Bank gives me the kind of information that I want to pay attention to.

[99] Q. Can you recall when you were at South DeKalb how salary increases for your officers out there were determined? A. Well, they were, of course determined by—the president's salary, fortunately or unfortunately, was determined by the board of directors of that bank. I think it was a little low, but we will go with that. But the salaries of the other officers were determined by me, and the other employees'. Now, I did have some guides to go with that I got from C&S National Bank which were very helpful in making the determination of what salary should be paid. But certainly who put the plan into execution would be myself.

Mr. Kinkaid: That's all.

(Whereupon, the above-entitled deposition was concluded.)

. . . . . .

WARREN L. BERRY

Sworn to before me and subscribed this . . . . . day of . . . . . , 1972.

. . . . . .

Notary Public

The Citizens and Southern Bank of Milledgeville

August 15, 1972

Mr. Michael A. Doyle
Alston, Miller & Gaines
Citizens & Southern National Bank Building
Atlanta, Georgia 30303

Re: Errors in Disposition for Civil Action File Number 15823 United States of America, Plaintiff vs. The Citizens and Southern National Bank, et al., Defendants

Dear Mike:

The typist surely made a lot of errors on this. Here are those I could catch.

P. 4, L 11 "684" should be "864."

P. 35, L. 6 "You would have to them" should be "You would have to ask them."

P. 39, L. 16 "though" should be "thought."

P. 40, L. 3 "though" should be "thought."

P. 40, L. 8 "though" should be "thought."

P. 44, L. 17 "get" should be "got."

P. 45, L. 16 "than I could from The C&S Bank"—leave out.

P. 46, L. 4 "trust account" should be "trust department."

P. 48, L. 9 "privide" should be "provide."

P. 55, L. 15 "acticities" should be "activities."

P. 59, L. 6 "ver" should be "very."

P. 64, L 21 "on" should be "or."

P. 66, L. 15 "because demand deposit money" should be "because time deposit money."

P. 66, L. 22 "normayly" should be "normally."

P. 70, L. 4 "for" should be "far."

P. 70, L. 21 "onsiderable" should be "considerable."

P. 99, L. 5 "but we will go with that" should be "but we will not go into that."

Sincerely

WARREN L. BERRY
President

WLB/pgs

P.S. Please send me a copy for my files. W.L.B.

GX 199

(Title omitted in printing)

The deposition of **Dr. William M. Cason,** taken at the instance of the Plaintiff. Reading and signing of the deposition not waived; signing before any notary stipulated. Taken before William L. Meigs, Deposition Officer, commencing at 9:30 o'clock a.m., July 27, 1972, 12th floor, Citizens and Southern National Bank Building, Atlanta, Fulton County, Georgia.

* * * * * * *

[4] Whereupon,

DR. WILLIAM M. CASON

was called as a witness and, having first been duly sworn, was examined and testified as follows:

Cross-Examination

By Mr. Kinkaid

Q. Would you please state your full name and residence address? A. Before I start, do you want my middle name or just initial?

Q. The initial will be all right. A. William M. Cason, 6566 Glenridge Drive, N.E., Atlanta 30328.

Q. Are you a director of the C&S Bank of North Fulton? A. I am.

Q. Excuse me—— A. I am a retired director, Sandy Springs.

Q. Excuse me; Sandy Springs. How long have you been a director of that bank? A. I was one of the original group, and I retired in the spring of '71, last year.

Q. Were you one of the organizers of the bank as distinguished from an original director? [5] Yes, sir. Now, I don't know what difference there is, there; I say "Yes, sir." I may be—I don't know just exactly what you are referring to.

Q. Well, what I meant was were you one of the group that originally sought a charter for the bank in Sandy Springs? A. For a state bank, you mean?

Q. Well, first we'll take the state bank; yes. A. Yes, I was with one group that sought a state bank.

Q. And what happened to that effort? A. Well, as I understand it, we were advised that it would be advisable for us to withdraw our application.

Q. Who gave you that advice? A. One of the other members of my group. I don't recall which one. We didn't all participate completely in everything, especially just getting organized. But actually I understood that there were three group applications, and they were all advised to—I hope I'm not letting anything out of the bag, because you didn't ask for this—to withdraw that. The authorities didn't feel that the situation warranted a bank in Sandy Springs.

Q. After the effort to form the state bank failed, what happened next with your group? A. Tom Cook, the man who became president of the bank, original bank, is a friend of mine. I've been knowing him all of his life. He's from down here at Cochran, Georgia and **[6]** his father had a bank down there, and he knew me, and we lived in Sandy Springs, so one day he told me that a group was trying to organize a national bank, and Mr. Mills Lane had suggested that they might see if I would be interested in organizing a national bank. And I told Tom, "Well, I'll think about it a little bit." But I didn't feel like I would want to be with the group for a national bank unless Jim Aldredge was also included, because he and I were with a group that tried to get the state bank, and it was withdrawn, and I didn't want to put myself in the position of appearing to squeeze him out, you see, and I felt like I ought to be loyal that much to him in this situation. So they invited Jim Aldredge also.

* * * * * * *

[1] GX 200

(Title Omitted in Printing)

The deposition of **Gus Lockett Connelly,** taken at the instance of the plaintiff. Reading and signing of the deposition not waived; signing before any Notary stipulated. Taken before

William L. Meigs, Deposition Officer, commencing at 1:30 o'clock, p.m., August 1, 1972, C&S National Bank Building, Atlanta, Fulton County, Georgia.

* * * * * * *

[4] Whereupon,

GUS LOCKETT CONNELLY

was called as a witness and, having first been duly sworn, was examined and testified as follows:

Cross-Examination

By Mr. Kinkaid

Q. Would you state your full name and address, please? A. My name is Gus Lockett Connelly, I live at 171 Pine Lake Drive, Northwest, Atlanta, 30327.

Q. When did you become president of C&S Bank of Tucker? A. President in February of 1965.

Q. During the time you have been president, have you also been a director of the bank? A. That's correct.

Q. What was your occupation before becoming president of Tucker? A. I was an assistant vice president with the C&S National Bank.

Q. How long have you been with C&S? A. I started with C&S National Bank in February of 1955.

Q. Were you working with any other bank before then? A. No, I came with them out of the service.

Q. How did you first find out about the opportunity of [5] being president of the Tucker bank? A. Herb Dickson, who was, I think, the executive vice president of C&S National Bank at the time and my immediate superior—well, not my immediate

superior but over all of the officers, the main office, called me into his office one morning and told me that the opportunity existed for me to become president of the then Bank of Tucker, in which C&S was buying a 5 percent interest, and he felt like it would be a good opportunity for me and, if I was interested, I could talk further with Bennett Brown, who was in the correspondent bank department and was the one, really, working with Mr. Cofer and Mr. Lane in that position in the bank. And from that point I went forward.

Q. Do you recall at that time any discussions with C&S National officers with respect to the relationship that would exist between the Bank of Tucker and C&S National? A. Well, it was to be similar to some other banks where they had a 5 percent interest, that somewhere down the road they hoped that the laws would be changed that would allow them to merge these banks into the C&S organization, and there would be nobody new until then, and you could just go out there and bank the C&S way of banking.

Q. Did they tell you that you would be free to run the bank the way you saw best? A. Well, we really didn't talk about it. It was just **[6]** understood that you would have a board of directors that you would account to, and you would make any recommendations that you personally felt needed based on your background with C&S as far as any changes that you thought the bank ought to make; pretty much a free hand in that respect.

Q. Do you happen to know of your own knowledge whether or not the board of directors of Tucker could have asked for somebody else if they had not wanted you as president? A. Well, the only indication in that regard was probably from Mr. Cofer, who ended up with roughly 20 percent of the bank after they sold it—of course, they owned it a hundred percent before that—and that was that if he wasn't satisfied with the way I was running the bank that he had the option to go back to Mr. Lane and say, "We would like somebody else." That came out in the

conversation one time. But that was after I had been on the job maybe a couple of months, and apparently he was satisfied because nothing ever came of it.

Q. Were you actually, then, elected formally by the board of directors to be president of the bank? A. Right.

Q. Who selected the other officers and employees, or did you use the same people who had already been with the bank previously? A. Actually I was the only one that went out from C&S [7] initially, and we really didn't bring anybody else in probably until we opened a branch, and, of course, Jim Hardin, the branch manager, came from C&S. And somewhere, I'm sure, in the first year or so we maybe picked up a teller or something that lived out that way and wanted to work closer to home that was C&S connected.

Q. Whose job was it to select additional personnel or the branch manager that you mentioned? A. Well, of course, it would have been my responsibility, working with the cashier of the bank, who really did the interviewing and that type stuff for the bank.

Q. At the time you were told that this opportunity was available, was there any discussion as to the types of services that might be available to you from C&S? A. No, nothing specific. I, of course, you might say just assumed that all of the normal correspondent bank services would be available, and our basic relationship would be that of a correspondent bank with a major correspondent.

Q. Could you tell us from your own standpoint what you would consider normal correspondent services? A. Well, of course, the major one is always the clearing of your checks. That's primary for any bank to have somebody to clear those. Then, aside from that, a bank our size needs to have a strong backup as far as being able to sell off loans that exceed its legal limit, or, if its overall loan [8] ratio gets too high, it needs to sell off to its correspondent this excess. And then, of course,

you've got a multitude of other things, of installment loan billing service and things that—and then, of course, you've had your computer services developed whereby they will do your bookkeeping and so forth. That was not available at the time I went out there but became available later on.

Q. How are the salaries of your bank's officers determined or by whom are they determined? A. Well, the officers' salaries, with the exception of mine, are handled by me. My salary is handled through the board, usually with the recommendation of the advisory board member who keeps the board informed as to what they feel is a salary comparable for the type job that I have or that the individual in my position has. And they make the recommendations to the board or the salary committee, and I assume they concur and come that way to me.

Q. Do you have to get approval on the salaries for other officers that you yourself determine? A. Yes—well, yes and no. I'll tell them—I will find out what the salary range is in the C&S system for that particular job, and then I will report to them that I am recommending putting through a salary increase of X number of dollars for a particular officer, and they normally have concurred in whatever we sent through. If they disagreed, then **[9]** we would talk about it and——

Q. Excuse me; when you say "they" and "them" in that answer, to whom are you referring? A. Well, it would be the advisory board member on our board from C&S, Don Ingram, in this as far as we're concerned.

Q. Why do you run these things through Don Ingram? A. Well, of course, we have had a cross-flow of people from us to them and vice versa. They send a lot of people out for us to train, and if we have a job opening up in our bank, we look to them for the manpower. Therefore, we need to keep the salaries we are paying pretty much in line with what the job calls for throughout the C&S system, so that we not get a job too

high or a man too high through the C&S system downtown. That's primarily the reason we are consulted on these things.

Q. When you first went out to Tucker as president, did you continue with the service charges on checking accounts and interest that was being paid on savings accounts and banking hours, or did you make any changes in those? A. We made a change in the service charges not too long after I got out there. They were under an old system where they rendered statements on the special checking accounts every 90 days, quarterly, and this actually was causing the bank a lot of physical problems because if you had 90 days to keep somebody's records, you had to increase your **[10]** chance of messing it up and that much longer for them to know about it. So we changed that service and went to a monthly statement and then went to a service charge schedule that was pretty—well, it was common in the Atlanta area at that time for special checking accounts. The regular checking accounts we left as they were as far as service charges were concerned, but we did change the special.

Q. When you say that the charges that you instituted on special checking accounts were pretty common, what did you specifically have in mind as a reference point there? A. Well, this is the 10 cents per check with a base charge of 25 cents for the statement itself. If you wrote three checks you paid 55 cents; if you wrote 10 you paid $1.25.

Q. Was that common to the majority of the banks in Atlanta? And when I say "majority of the banks," I mean not just C&S Banks but non-C&S Banks as well? A. Yes. Everybody pretty much did the same thing.

Q. When you first went out, did you institute any changes in the banking hours as such? A. Yes, initially they were open six days a week, a half a day on Wednesday. We started closing all day on Wednesday rather than opening up part of the day, and then—well, probably a year or so later—we dropped Saturday banking and went back to five days a week banking and made

our [11] staying open hours on Friday later to take care of a lot of people who couldn't get to the bank by 4:00 o'clock.

Q. Whose idea was it, first of all, to eliminate the half day on Wednesday? A. That was mine.

Q. And what was the—Well, let me put it this way; did you consult with anyone from C&S National or C&S affiliate with respect to closing that full day Wednesday? A. I probably told them that I was going to do it because we kept running into a big overtime problem, because you can't really, when you open up a bank—when you close at 12:00 you are still there until 2:30 or 3:00, so we were really working 45 to 50 hours a week, and there was no way to do it when you opened up that half day on Wednesday. So that was one of the big reasons behind it.

Q. What was your reason for informing C&S that you were going to close the bank on Wednesday? A. Well, just of course —I looked to C&S for advice and counsel on a lot of things, you know, that I would analyze the thing and reach my decision and then, just to get somebody else's thoughts on whether there was something I was overlooking, I would talk with the advisor—well, of course, at that time the C&S people actually directors of the bank rather than advisory board members, but I would talk to them just for their advice and counsel on the subject.

[12] Q. Had you been instructed by anyone at C&S National to keep either National directly or the National personnel on the board at Tucker, were you instructed to keep anybody advised as to what you were doing? A. No, no direct instruction to that effect. They just kind of understood that I would. It was just common sense to do it.

Q. Do you have the authority, for example, to change the interest rates that your bank charges on loans? A. Interest rates on loans, yes.

Q. Would that also be true for the interest that your bank pays on various—or any type of savings account? A. Savings

we work through the board. We would recommend to them what the rate should be, and they usually would concur. Right now it would be a legal maximum in all cases on interest rates.

Q. What is the maximum right now on passbook savings accounts? A. It's 4 percent.

Q. That's what you're paying now? A. We pay 4; right. Downtown I think they pay 3½.

Q. By "downtown," who do you mean? A. C&S National Bank.

Q. When did you go to 4 percent? Can you recall? A. Well, they were paying 4 when we went out there, **[13]** or when I went out there.

Q. In other words, has there ever been a change in the passbook savings rate? A. No.

Q. Now, would you have the authority or would you have to check with the board on changing service charges on checking accounts? A. We would take that to the board.

Q. Would the same be true if you wanted to change the hours of the bank? A. Yes.

Q. So if I understand you correctly, then, the only thing on which you would have authority yourself would be on the—maybe I misunderstood you—— A. Interest rate on loans.

Q. The interest rate on loans is the only thing that you have the authority on? A. Right.

Q. Other than what you have already mentioned—and I guess we can include those, too—have you since you have been president at Tucker changed the—changed any of your interest rates paid on savings accounts? A. Well, the passbook savings remained the same, then you had the 90-day and the one-year certificates that have come along, that have been instituted, but the changes there **[14]** have been as the law

permitted the changes from 5 percent to 5½ for one year, 5¾ for the two-year certificate.

Q. Have you changed any of the service charges on checking accounts since you've been out there? A. Yes, probably about two to three years ago they were changed. The—what we call the "maintenance charge" was changed on—I think it was from maybe 50 cents a month to a dollar a month, if my memory serves me correctly.

Q. Can you recall how you decided or on what basis you decided to change the maintenance charge to a dollar? A. This took place, I believe, when one of your major Atlanta banks lowered their minimum charge balance requirement to $250. We had to lower ours at the same time, or we did lower it, to stay competitive, and at that time we adjusted our service charge schedule to be more in line with what the Atlanta banks were paying—charging, rather.

Q. Do you recall the bank which initiated the lowering of the minimum balance? A. I believe it was the Trust Company. Don't hold me to it, but I think that's it.

Q. If you can recall at that time, what was the closest Trust Company office to your bank? A. Well, it probably would have been their affiliate bank in Executive Park, which was four or five miles away.

Q. Now, when you say that you also lowered your minimum **[15]** balance to stay competitive, were you thinking there primarily in terms of the Trust Company office in Executive Park or were you thinking of the Trust Company generally? A. Well, we get a fair number of our customers, of course—in most cases the husband is working downtown or in some area contiguous to another bank, and the wife, of course, in our—you know, they live in our neighborhood, and as long as we are competitive we will get the business. If we get out of line, then he will start doing the banking downtown. And so we

are really competing with where he works, so whatever bank happens to be close to where the man works—it might be C&S National or First National or whoever it might be; to that extent we felt ourselves part of the Atlanta market.

Q. When you also mentioned that you changed the maintenance charge at the same time to the level that was being maintained at the downtown banks, did you have in mind the downtown offices of the downtown banks? A. Well, their downtown offices and branches. Of course, at that time they were limited to the city limits of Atlanta. Of course they had offices in Decatur at that time, First National and Fulton did. So, as I say, it spreads on out through the area that way.

Q. In making these various changes that we have been discussing, either in hours or service charges on checking accounts or any changes in savings account rates, did you take **[16]** into consideration anything other than the profitability and growth of your own bank? A. No, that would be your primary consideration, what is best for your bank.

Q. Would there be anything else that would be a consideration, from your standpoint? A. Well, of course, you want to serve your customers as best you can, and sometimes you institute a charge in order to do this, but that indirectly benefits the bank, too, so any way you play it, it's going to get back to the same point.

Q. Have you ever been directed by C&S National or C&S affiliates, for that matter, to change the interest rates that you would charge on loans? A. No.

Q. How about the same question on interest rates on savings accounts of any kind? A. No.

Q. Service charges on checking accounts would it be the same? A. Yes. The reason I'm hesitating, they don't direct us, but, of course, on utilizing their computers, we did adopt their schedule on commercial accounts, of analysis, because the com-

puters were set up for the way they handled it. So they would have had to write a completely different [17] program for us if we elected to go another route. So there was no direction done; we just said well, we wouldn't—you know, instead of the program we were using, which involved a lot of hand work, we elected to use the program that they had available for us on commercial accounts.

Q. Well, as a matter of fact, does C&S National in any way have the ability to direct what your bank charges with respect to loans or checking accounts or the interest it pays on savings accounts? A. Legally, no.

Q. Any other way besides legally? A. Not really; you might say a kind of father-son relationship. They tell you what they think, and as a son you may or may not agree with them.

Q. Since you've been president at Tucker, have you felt in any way that your actions as president were in any way controlled by C&S National or any C&S affiliate? A. No, I've had a pretty free rein to do what I thought was—to run the bank as I saw that it should be run.

Q. Do you attend any meetings with C&S National officers? A. Yes. On Wednesday morning there may be two meetings. In one Dick Kattel has a general type information meeting on occasion, when he calls it, that we sit in on. And then, after that meeting I will preside in a credit group meeting of some other 5 percent bankers and some of the branches of C&S [18] National Bank where we are reviewing credits that have been or are in effect at that time.

Q. Could you give us some idea of the kind of topics that would be discussed at the Wednesday credit meetings? A. Well, these are primarily just reviews of credits, financial statements, and it's a real training tool for the younger officers to have; the officers that are handling the credit talk to the group about, "This is what I see," and "Why I did this" and "Why I didn't do this" as far as the credit is concerned. And then, of course, the other

officers in the group may have some suggestions or comments or something that he has overlooked or that needs to be discussed with the customer, and these will be pointed out during the session. And aside from reviewing the credits, occasionally the representative from branch supervision will maybe comment on some program, savings campaign or something that is in effect at the time. Primarily they are credit meetings.

Q. Does someone from branch supervision generally appear at these meetings? A. Yes.

Q. Could you give us the names of some of the people from branch supervision that sat in on these meetings? A. Well, of course, presently Don Ingram is the representative that covers the group that is represented at the meeting that I'm in, and in his absence Paul Ard is [19] another one that is present sometimes if Don's out of town.

Q. Can you recall when you first started attending these regular credit meetings? A. It's probably been going on three or four years. Just when in the last eight, it's hard to remember when they picked up, but——

Q. In other words, it's been since you went out to Tucker? A. Right—well, they've had these credit meetings since I've been with the bank, really, but they changed the format as time went on. There used to be just one credit meeting for the whole bank, and as the bank has gotten larger, they broke them down into groups. And, as I say, initially when I went to Tucker I don't think they had any groups that we belonged to as such.

Q. Well, when you first went to Tucker, did any of the correspondent associates attend these meetings, to your recollection? A. We attended the general meetings. At that time Mr. Lane was having the meeting on Wednesday morning. We attended those the whole time I was out there. But, as I say, they didn't have a credit group structured for correspondent associates at that time.

Q. What I meant, though, was even before they broke this down into groups, did the correspondent associates, to [20] your knowledge, attend credit meetings? A. I don't know. I don't recall whether they—at that time it would have been Chamblee and Sandy Springs.

Q. Well, let me ask it in a different way. When you first went to Tucker, did you immediately start attending credit meetings? A. No.

Q. When you were first—I gather you were invited to attend these credit meetings? A. Yes.

Q. What were you told as to the purpose of these meetings and your reason to be there? A. The main purpose was, as these were a training tool, for the men in the credit department to have an opportunity to have the loan officers discuss credits and help them be trained, because, as I say, all of these loans are on the books; it's not a case of any type approval of the loan. It's already made, and the money's gone, so to speak. So that is, to my knowledge, a training meeting more than anything else.

Q. As a result of going over loans that have already been made, have you changed your attitude with respect to making loans in the future after these meetings? A. No, as far as any of my loans I haven't changed the attitude. I can't speak for any of the other people that [21] presented credits, but it hasn't affected any of our credits.

Q. Is this credit meeting, is this the only time in which you discuss specific loans with anyone from C&S? A. No, we will have—when we get our F.D.I.C. examination and state bank examination, we will have a meeting of the audit committee of our board of directors, at which time the advisory board member from C&S will be present when we have these discussions.

Q. Are any loans made by your bank over a certain amount reviewed in any way by anyone from C&S National, to your knowledge? A. No. Of course, our loan committee at the

board reviews or okays loans within our bank over the 10 percent limitation.

Q. To your knowledge, is that something that is required by either statute or regulation? A. Yes, a state statute requires a loan committee on those.

Q. Mr. Connelly, there are six documents here which have been marked as Presidents' Deposition Exhibits 1 through 6. You now have a set of these. Would you please take a moment to just look through these things to familiarize yourself with them.

Do you recall receiving these particular documents? A. Yes, I've seen them all before.

[22] Q. Mr. Connelly, could you look first at the documents that are marked Exhibits 5 and 6, and would you notice that at the bottom—both of these are specifically addressed to "Bank Managers, National Bank," and "Presidents, Affiliates." At the bottom there is an indication that copies were sent to "Presidents, Correspondent Associates, For Information Only." Now, would you look at the other four that you have there? A. Okay.

Q. You will notice that the other four are addressed to "Branch Managers, National Bank," and "Presidents and Managers, Affiliates, and Correspondent Associates." Do you have any ideas as to why numbers 5 and 6 have the notation "For Information Only" on them while the other four do not? A. No, we just receive them all for information only, as far as we are concerned. There is no—Why they dropped it, I don't know.

Q. For example, could you look at number 5. Now, this one deals with drive-in banking hours. Can you recall if at that time whether—well, first of all, do you have drive-in facilities at your bank? A. Yes, we do.

Q. In November 1969, can you recall whether your drive-in windows were being kept open until 4:00 o'clock? **[23]** A. Yes,

I'm pretty sure we were already doing it. We might have been the ones that started them thinking that way. I'm not sure.

Q. Would you look at Exhibit No. 2. A. Okay.

Q. This exhibit, as do some of the others, refers to something called the "commercial loan rate chart." First of all, could you tell us what this particular chart is all about? A. Well, this would refer—I think we've got one in here; yes, Exhibit 4 is the rate chart we're talking about where they break down the different rates as to loan amounts and so forth, which is a chart that gives you more or less a guideline of what the rates are for each loan classification.

Q. Are the rates that appear here on the commercial loan rate chart, are they geared to the prime rate at the time, so far as you know? A. Yes—well, it used to have a lot to do with it. It probably doesn't as much now since your savings rate has put a floor on a lot of your rates, more so than the prime rate.

Q. To your knowledge, would the rates that actually appear in the commercial loan rate charts, would these be the actual rates that C&S National would be charging on commercial loans? A. Probably in most cases. Of course, there would be **[24]** differentials from all of these rates within, I'm sure, C&S National because we don't adhere to this one completely. We've got most of ours higher, probably, than theirs.

Q. By "we," you mean the Tucker bank? A. Tucker; right.

Q. But your information would be that these rates are actually the rates of C&S National itself? A. Subject to other factors influencing what the final rate is in a given situation.

Q. Incidentally, in that regard what is the main tool that you as a bank president would use in competing for loans of any kind? Would it be interest rate or would it be something else? A. Your primary tool is your ability to serve the customer and to be acquainted with his needs and his developing the confidence that you can look after his requirements better than some-

body else. I think this is the primary consideration so far as the customer and the bank are concerned. The rate—Except when you're talking about fully secured type loans that can be shopped to anybody, rate is not a factor.

Q. Can you tell us what percentage of your bank's commercial loans are secured versus unsecured, roughly? A. We are probably 80 percent secured. We are heavy in real estate construction lendings, which would be the reason for it.

[25] Q. Has that generally been true all the time that you have been in Tucker? A. We've always—It's been more real estate with a lot of banks in a lot of other areas in Atlanta.

Q. Looking at Exhibit No. 2 again, this memorandum from Mr. Ingram indicates that—well, he states as follows: "Let's also remember that this rate chart reflects minimum rates, and there really should not be a reason for handling any loan below this minimum."

To your recollection, at this time were any of your commercial loans below the rates on this chart? A. We possibly had some accounts receivable loans that were maybe at 11 percent, where they're talking about 13 percent. But our construction loans generally are higher than theirs.

Q. How did you interpret the phrase there that "there really should not be a reason for handling any loan below this minimum"? A. Well, interpreted it as meaning that there should be a good reason if you do. But, as I say, we set our rates, so I don't get too concerned with those things.

Q. So far as you are concerned, did you consider that as being any kind of direction to make sure that none of your loans were below the minimums in the loan chart? A. No, no direction as such because our rates were **[26]** still lower than those.

Q. That example was the accounts receivable that you mentioned? A. Yes.

Q. Similarly, would you look at No. 4. A. Okay.

Q. In the last paragraph where it says, "In some cases, the value of the relationship and the relatively nominal risk will warrant a rate lower than those listed."

What was your understanding as to the phrase, "the value of the relationship"? In other words, what was being referred to at that point? A. That would be referring to balances maintained by the customer in a situation like that.

Q. Well, it goes on to say that, "On the other hand, where the full service relationship does not exist and the risk is greater, you will want to charge a rate somewhat higher than those listed."

Did you interpret that as a direction to you to charge higher rates under those circumstances? A. No. This is just really a more or less kind of a basic pricing formula in banking, not just C&S but in any banking organization, that these factors are weighed in setting the rate and more a reminder that this is so.

Q. In other words, if you had a situation of your own **[27]** where you wanted to disregard this general wisdom—if you want to call it that—would you have simply gone right ahead and disregarded it? A. Yes, if I had had a situation like that. But, as I say, it's kind of a principal of banking, almost, that you weigh these factors.

Q. To your recollection over the years that you have been at Tucker, can you recall receiving memoranda similar to these on similar topics before 1969? The reason I ask that is the earliest ones we have here are dated in 1969. I was wondering whether you can recall receiving memoranda similar in nature to these before 1969. A. I would think I did. I don't recall, but I know no reason for these years to be significant.

Q. Now, you have indicated, I believe, before that your reaction to these memoranda was that they were—whether they

said so or not, they were for informational purposes? A. Yes.

Q. Could you take a guess as to what percentage of these memoranda you have in your own business at Tucker actually followed? Or, to put it another way, how many you have acted upon in the way in which the information was relayed? A. Off the top of my head, I would say 75 percent to 95 percent; just a guess.

Q. Well, perhaps I ought to ask it a different way. **[28]** Have you considered this type of memorandum to contain recommendations or advice as to how to conduct your banking business? A. Yes, I would consider it recommendations and advice, would be the term, and if it appeared to me that it were best for my bank to follow it, I would follow it.

Q. As a result of following the majority of these recommendations, has your bank ended up being operated in a way that would make it appear to be very similar in operations to other C&S Banks? A. Yes, we would appear to be a similarly operated bank.

Q. But that result, if I understand you correctly, would flow from the fact that you were following most of these recommendations because you thought they were in the best interest of your own bank? A. Right. And also my C&S background influences much more than the memoranda the style of my personal banking or how I run a bank and feelings as far as customer service and how you approach a loan and just the basic things to make banking easier for the customer, and that's a philosophy, and we take off from there.

Q. As a matter of fact, at this moment would you really know how to run a bank other than the way you have already been trained at C&S? **[29]** A. No—I mean that's my training, and it would be hard to deviate from it unless I were shown something that I thought was a better way to do it.

* * * * * * *

[53] **Redirect Examination**

By Mr. Doyle

Q. Gus, do you sell your bank as a C&S Bank? A. Yes, we do.

Q. In doing that, does the C&S name—is that of help to you in the doing of it? A. Yes, as I said before.

Q. During the months of February, I believe, until about June or July when you went out to Tucker and did not have the C&S name, during those months was your style of doing business any different than it was after you put the name up? A. Well, the style would not have been any different. Of course, the old Bank of Tucker did not have a good image in the community for providing service. The quickest way to get the message across to the people that we were under new [54] leadership and new management and to emphasize our affiliation relationship with C&S would be to change the name. And, of course, as you know, it was instigated by the Bank of Tucker at that time to request the name change. We were the first ones to do so, and it was through my efforts in convincing Mr. Reid Cofer that it would be best for the bank if we could more closely identify our relationship, and he agreed with this, and he was, of course, instrumental in convincing Mr. Lane that this should be done. After several tries, Mr. Lane finally agreed to do it.

Q. What has been the result of that name change, in your eyes? A. Well, I feel like it has certainly been instrumental in helping us to achieve the growth rate that we have achieved over the last eight years.

Q. To your knowledge, is your bank regarded as a C&S Bank by your competition? A. By my competition, yes.

Q. Do you yourself regard your bank as a member of the C&S system? A. Yes.

* * * * * * *

[1] (GX 201)

(Title Omitted in Printing)

The deposition of **Thomas E. Cook,** Deponent, taken at the instance of the Plaintiff, reading and signing of the deposition not waived, before Roberta Newberry, Deposition Officer, commencing at 9:30 a.m., August 9, 1972, at 1776 Peachtree Street, Atlanta, Georgia.

* * * * * * *

[4] (Whereupon, the documents were marked PD Exhibits 6 through 16 for identification.)

Whereupon,

THOMAS E. COOK

was called as a witness and, having first been duly sworn, was examined and deposed as follows:

Direct Examination

By Mr. Kinkaid

Q. Would you state your full name and residence address, please? A. Thomas E. Cook, 375 Holly Berry Drive, Roswell, Georgia.

Q. What is your present occupation? A. Certified Public Accountant.

Q. Where do you operate as an accountant? A. In the Sandy Springs area. My office is in 418 C&S Bank Building, Sandy Springs.

Q. How long have you been in this occupation? A. Since leaving the bank, which was—oh, I guess August will be eight years ago now. I believe it is.

Q. Can you recall the month and year you actually left? Now, when you say "bank." I take it you mean Sandy Springs Bank? **[5]** A. Right.

Q. Can you recall the month and year you left Sandy Springs Bank? A. Well, it was in August. I may have worked a few days into September. In other words, I resigned in August. And the bank kept me on salary until the end of December, end of that year. And I stayed in an advisory capacity to Lou Fortuna. May have been the end of September. I'm not sure. And I believe that will be eight years ago this year.

Q. Would that be 1964? A. Right. Here, again, time is a little bit vague.

Q. What was your position when you left the Sandy Springs Bank? A. President and director.

Q. When did you become president and director of the Sandy Springs Bank? A. At the organization of the bank, which was in 1959.

Q. What was your occupation before becoming president of the Sandy Springs Bank? A. I was an assistant vice-president of the Citizens and Southern National Bank.

Q. How long had you been with C&S National? **[6]** A. Approximately twelve years at the time—you mean at the time that I organized it?

Q. Yes. A. Yes, twelve years.

Q. Was C&S National the first bank that you ever worked for? A. Yes.

Q. Can you recall how you first found out about the possibility of being president of the Sandy Springs Bank? A. Well, here again, it's hazy. But as I recall I was asked by Mr. Mills Lane, president of the C&S National Bank, if I would organize a bank in Sandy Springs. I was serving in the capacity of a lending officer. He just called me in one day and asked

me would I organize a bank in Sandy Springs called a correspondent associate. And you don't say no to something like that.

Q. Why not? A. Well, I mean, if you're offered a promotion and you turn it down, you might as well say good-bye to any other opportunities for promotion. In fact, I welcomed the opportunity. I had lived in Sandy Springs for approximately six years prior to that time. I had moved to Roswell about a year prior to that time. Mr. Lane knew I had a lot of friends in Sandy Springs. I had been active [7] in community endeavors in the Sandy Springs area. While I lived there, I was active in the church there. He knew that I had many friends in the Sandy Springs area. He figured that I would be the logical one to organize the bank.

Q. Do you recall whether or not any persons in the Sandy Springs area had come to Mr. Lane seeking C&S National assistance in forming the bank? A. That would be hearsay evidence. I had no direct knowledge of such.

Q. In other words, when you say Mr. Lane asked you if you were interested in organizing a bank at Sandy Springs, your recollection now is that you don't know whether or not some people had in the Sandy Springs area the idea of forming a bank and sought C&S National assistance? A. Let me put my answer another way. It's not a direct answer to your question. But there had been an attempt on the parts of some other parties to organize a state bank in the Sandy Springs area. And they had been denied by the state banking authorities a charter to organize one in Sandy Springs. I had knowledge of this: that there had been an effort by some people that, as far as I knew, were completely independent of the C&S banking system. But they had been denied an opportunity—I mean, denied a [8] charter. And I'm sure Mr. Lane was aware of that fact. I cannot recall specifically how long a time intervened in between the denial of that charter and the application for the national bank charter that we eventually made.

Q. Were the same people involved in seeking the state charter —were they the same people who also—— A. No. Now, some of them eventually became directors. But they were not the original board of directors. They were not, you might say, among the original organizers of the bank that eventually was chartered as the Citizens National Bank of Sandy Springs. That's my recollection.

Q. Were you in any way involved with the group that was interested in seeking a state charter? A. No, except maybe indirectly. I mean, I wasn't offered a position with that bank, if that's what you're implying.

Q. Can you recall what Mr. Lane told you the relationship between C&S Nationl and the new bank in Sandy Springs would be? A. I can't recall the specifics of the conversation. This is just a hazy impression. I don't know the specifics. I expect that he figured that I had intelligence enough to know what the relationship would be. It would be a correspondent associate. As I remember, Sandy Springs was not the first one that the C&S Holding Company owned **[9]** five percent in. And I knew. Whether he told me or I had it from knowledge, I knew that it would be a five percenter bank, as we call it. And I don't remember whether Sandy Springs was the first one. It was one of the first ones. But I'm not sure that Sandy Springs was the first one.

(Discussion off the record.)

By Mr. Kinkaid

Q. While we're waiting for that document, which we will mark as President's Deposition Exhibit 17, this particular document is entitled "Additional Information Requested in Connection with Application for a Proposed National Bank in the Sandy Springs Area." In this document there is the following statement, quote, "Because of reasons outlined in the interview

with Mr. Lane, stock subscriptions have not yet been solicited and will not be solicited until the charter has been approved."

Why don't you look at my copy of that for the time being. Right in that paragraph. A. May I look at——

Q. Sure, read the whole thing, if you like. A. (Reading)

(Whereupon, said document was marked as PD Exhibit 17 for identification.)

[10] The Deponent: Do you have the document that these were answers to?

Mr. Kinkaid: No, we do not.

The Deponent: I don't even know what interview he's talking about.

By Mr. Kinkaid

Q. Do you have any recollection of an arrangement whereby stock solicitations for the Sandy Springs Bank would not be made until the charter had actually been approved? A. Yes. I recall that that was the policy.

Q. Do you have any recollection as to the reasons for that policy? A. This is a recollection. It had a lot to do with the fact that this other bank had been denied a charter—this state bank that we had talked about earlier. They had already had stock subscriptions from many of the people in the area. And we had available the names of those subscribers. And many of them had spoken to me, informing that they would be interested in subscribing to stock in our bank if it were approved. So we had reasonable assurance that we could get all of our stock subscribed. When we used the word "solicited," we had not actually gone out and asked for any or had not actually taken any subscriptions, I don't believe. But we felt that since the other charter **[11]** had been denied, that there was a chance that ours would be, too. And there wasn't any point in going through the work and disillusionment to stockholders of subscribing to

another bank that got turned down. So we felt that it was best just to wait until we had our charter and then proceed, starting with the previous list to actually get it subscribed.

Now, I don't recall anything about this interview with Mr. Lane, if you had specific reference to that.

Q. Can you recall at the time the Sandy Springs Bank was being formed, a charter was being sought, can you recall at that time under the state law in existence at that time how much stock C&S Holding could have purchased? A. The five percent.

Q. Do you recall if there was a period of time when the state rule allowed a greater amount of stock to be purchased? A. Yes.

Q. To your recollection, had that law already been changed at the time the charter was being sought for the bank in Sandy Springs, that is, the national bank? A. You mean the charter we sought for the national bank?

Q. Yes. **[12]** A. Oh, sure.

Q. Who selected the other officers who went to work at the Sandy Springs Bank after it was approved? A. When you use the word "officers," do you include directors?

Q. No. A. There wasn't but one other officer, and that was James Farr, who was cashier. Now, I'm not sure whether he was selected until after the charter was granted, meaning he did not, as I recall, do any work with me in the organization of the bank. And I honestly don't remember what specific steps we went through in selecting him. But he worked for Citizens and Southern National Bank also.

Q. Were you formally elected by the board of directors to be president of the Sandy Springs Bank? A. I would have to be I would assume.

Q. Do you know whether or not the board could have asked for somebody else if they had not wanted to have you as president of the bank at that time?

Mr. Doyle: I object to the form of the question as calling for speculation—what could have been. It could have been anything under the sun, I assume. I don't think it leads to discovery of relevant evidence. I object to it on the grounds of the form.

[13] By Mr. Kinkaid

Q. Can you recall what Mr. Lane told you so far as your going out as president? Did he tell you that "We're sending you out as president" and that's the end of it? Or did he say that the board of directors would have to approve you as president? A. Well, I don't know that he specifically said to me, "You will be president of the bank." That was implied, I guess. He more or less selected me to organize the bank, to apply for the charter. And he already had five men that he had approached and asked to serve as directors of the bank before he contacted me.

Q. How do you know that? A. Because he told me who they would be at the time that he called me in, as I recall.

Q. Did he tell you that he had approached these five men to be directors, or did he just tell you that these are the five men who will be directors? A. I don't recall the specifics of the conversation. He imparted to me that these men had been—would be directors. Now, I can't be responsible of how he went about it or what he said to them. I'm not sure.

Q. In other words, if I understand you correctly, you don't know whether Mr. Lane asked the five men to be directors or whether the five men came to Mr. Lane asking **[14]** for assistance in forming a new bank? A. No, I don't know the answer to that because I had no firsthand knowledge of the first selection. As I recall, they had been selected before I was approached.

Q. What was your understanding as to the assistance that C&S National would provide in actually forming the bank? A. I'd rather you be a little more specific about that, if you've got some specific things in question.

Q. Before the bank actually opened for business, what role did C&S National play in obtaining a charter and getting the bank ready to the point that it actually opened for business? A. Well, I was continued on the payroll of the C&S National Bank. I was gradually relieved of the other duties. For a while, I was performing both duties, carrying on the job that I had and sort of on-the-side doing the paperwork it took to get together the charter application. And then, still later, after the charter was granted, setting out and soliciting the stock. I was getting the stock subscriptions. At what point in this phasing out I completely gave up my duties and, more or less, became, you might say, full-time with the new bank, I can't specifically point it down. They provided me with an automobile to use to do this. They continued my salary until the bank actually **[15]** opened at which time, as I recall, I went directly on the payroll of the new bank. I knew, as I said earlier, Sandy Springs was not the first correspondent associate, as they called them or the five percenters. It was not the first. And I was aware of the things that the C&S National provided for those like assistance in selecting personnel and availability of employee benefits to the people that go to work for the correspondent associate through the facilities of the C&S National Bank. I was aware that there were other insurance programs and various things that could be—let me back up. I was not necessarily aware at the moment that he asked me to do the job. I was not aware that we had other insurance programs and other facilities. This gradually became within my knowledge as I became more and more involved with the operation.

Q. Are the employee benefit programs and the insurance programs that you mentioned, in what way—I think you used the term these were C&S National facilities. Now, I may have misunderstood you. A. The Citizens and Southern system facilities. It wasn't necessarily the Citizens and Southern National Bank.

Q. How were those programs Citizens and Southern system facilities? A. I don't understand your question.

[16] Q. Well, I didn't understand your answer. That's why I asked that. For example, on the insurance programs, how were the insurance programs funded? A. The insurance programs I had in mind, for example, after reading this (referring to Exhibit PD 17) I remembered that for bank bonds and other types of casualty insurance that the correspondent associates could benefit from, you might say, group benefits, through the C&S system. They could get it through the C&S system—more coverage than they could buy directly by themselves. That's the type of thing I had in mind when I spoke of insurance.

Q. How about insofar as the employee benefit programs you had in mind? A. Well, the Citizens and Southern system had certain group hospitalization programs. It had a profit sharing plan. It had a pension and retirement plan. It had C-S-ta at that time, a recreation facility at Allatoona. And those are the big things that I recall at this moment that they were available to the employees of the correspondent associates just as they were for employees of any other C&S banks in the C&S system.

Q. How was the money necessary to fund these various programs: the pension, profit sharing, the insurance programs—where did the money come from to fund those pro- **[17]** grams? A. You mean after the bank was chartered and in operation?

Q. Yes. A. Each bank had to pay its share. In other words, it was not provided prorata by the C&S system. In other words, in the profit sharing plan, what was the Citizens National Bank of Sandy Springs had to contribute. As I recall, each bank had a formula of how much of their profits had to be put into the plan. And we paid our—When I say "we," the Citizens National Bank of Sandy Springs paid its part under the formula into the profit sharing plan. I'm sure it paid for its share under the pension and other plans, too. I don't recall specifically how those things were funded. And the group hospitalization and so forth, as I recall, we paid our way. It wasn't provided prorata.

Q. These various programs that you mentioned, the various benefit programs that were available to the Sandy Springs Bank, was the availability of any of those programs from C&S National or from the C&S system to your bank conditioned in any way on anything that you had to do? Let me see if I can put it a little differently. Did you have to make any commitments of any kind in order to obtain these various programs that you've just mentioned? **[18]** A. When you use the word "commitment," I'd rather you be more specific as to whether you mean a signed document or stand up and swear sort of thing. I need to know what you have in your mind by "commitment." It was implied, certainly.

Q. What I meant was formal or informal, whether or not you signed a document. Was there any understanding as to things you would have to do in order to obtain those benefits? A. Not specifically. I think it was certainly implied that it was. Let me back up. It was certainly to the bank's—our bank's benefit to have available these programs for the employees and otherwise. And I don't recall that there was any specific commitment that you've got to do so-and-so and so-and-so in order to have these except the things that were necessarily required by the programs like, you know, paying for them and so forth —filing reports, and so forth, that would have to be done. There was no commitment on our part that you've got to run your bank like we say, for example, or else you don't get them.

There was certainly a moral obligation on the part of the correspondent associates that since they were doing this for us on a grace basis, you might say, that we would cooperate as much as we could with the C&S banking **[19]** system. And, certainly, they had the right at any time they chose to withdraw these benefits.

Now, the question was "on which side of the bread is your butter on" and you don't deliberately do things that would have your programs taken away from you. And it's more or less I'll pat

your back and you pat mine sort of thing. And this was not only true of the correspondent—five percent correspondent associates. C&S banking system made facilities available to other independent correspondent banks, not necessarily the employee benefit programs, but there were certain things that the C&S banking system made available to other correspondent banks in which they had no ownership in.

Q. Can you recall any of these things that C&S made available to correspondents in which there was no stock ownership? A. It would be hard for me to pin down something specifically and delineate in such a way. But I have an impression of many small things that they did. Of course, clearing checks and so forth like that is a natural line of business. But I know that there were plenty of favors that the C&S banking system did for its correspondents which necessarily were not general things that they made available. They did things on request, you might say. They would, for example, the C&S banking system has their **[20]** own internal auditors. Under certain circumstances, independent banks could ask that C&S make their internal auditors available for a specific task for a correspondent bank. If the C&S bank authorities thought it was of enough importance and the crew was available, they would make the C&S internal auditors available for a fee, obviously. I had in mind things like that.

My father was the president of a small bank in Cochran, Georgia, known as the Cook Banking Company in Cochran, Georgia. And we were a correspondent of—that bank was a correspondent of the C&S banking system. And I grew up in that bank—firsthand knowledge. I know of plenty things they had helped him do through the years. And this program was expanded upon through the years. So some of the things they did for us as five percenters, correspondent associates were available to other correspondents. Now, not the employee benefit programs.

Q. Perhaps it would be easier for you to recall if it were asked the reverse way. Can you recall what things were available to you as a correspondent associate that were not available to a correspondent? A. I wouldn't want to try to delineate that. I know the employee benefits were not. Now, when you get over into the other things, it's too hazy for me to even be——

[21] Q. As a condition for receiving these benefits and programs from the C&S system, were you expected to institute what has been referred to as "the C&S way of banking" in your bank? A. I think that statement is also a little bit too general to answer yes or no. "The C&S way of banking" is too much of a general statement.

Q. Were you expected to run the bank in Sandy Springs as though it were an affiliate or branch of C&S National? A. That's somebody else's expectation that I can't testify to.

Q. Well, did you feel expected to do that? A. Let me put it this way: my directors and myself—specifically the directors—oftentimes specifically the directors—not necessarily me—they went a large degree on recommendations I made. But sometimes they'd do things that I didn't necessarily recommend. They felt, as a general policy, that what was best for our bank had to come first. And on several occasions—really, there were many occasions. But on several significant occasions, it involved serious delineations in policy from what the C&S was doing that we chose or my board of directors chose it was not best for our bank to follow that policy. And we did that.

[22] Now, this eventually got me in hot water with the boys at the C&S Bank and eventually contributed to my mutual departure from the Sandy Springs Bank for I felt an obligation to my stockholders. Also, I felt an appreciation for the benefits that the C&S provided me as an employee and as an officer. And to the extent that it did not contravene with what I felt was first interest of my stockholders, I cooperated with the C&S banking

system. It would be foolish not to with the benefits that they provided us. But when it came down to specific occasions where I felt that it was not smart for our bank, as far as service charges are concerned, as far as savings interest rates were concerned, as far as banking hours were concerned, we had our own competition to meet in the Sandy Springs area. And I would consult with my directors. And they would say, "Well, we don't care what the C&S people say. We think it's best for our bank to do so-and-so." And they would proceed along that policy.

And I will pull out some specific cases in point. You will remember back when savings interest rates started going up. For many years they were two and a half, three percent—something like that—open savings account— up to about three and a half percent. Well, I believe it was at the time that they broke up to the four percent rate—up to the five has been in more recent years—our [23] competition was mainly the First Federal Savings and Loan Association who had a branch right there in Sandy Springs and the Roswell Bank from whom we had to get a lot of our potential customers because most of the people in Sandy Springs went to Roswell to bank until our bank opened. And we were trying to win some of them away from the Roswell Bank. And in order to do so, we had to have banking hours—for example, we were open on Saturdays and closed Wednesday, which was not C&S policy, in order to compete with the Roswell Bank.

So when they went to four percent—and, obviously, the First Federal Savings and Loan Association already had a higher rate—when they went to four percent and some of the other banks in Atlanta chose to go to four percent—the C&S chose not to go to four percent. They stayed at three or three and a half—it was a significant jump.

Our directors discussed this and decided that we had to go to four percent. Now, that did not make C&S people happy. But my directors said, "We've got to worry about our problem."

I recall another specific circumstance whereby in later years the Federal Home Loan Association or whatever it is—It's the equivalent of the Federal Reserve Board to the federal savings and loan associations—permitted **[24]** the federal savings and loan associations to buy five percent savings certificates. That's when five percent savings certificates became available. The regulatory authority for savings and loan associations said "Well, you all can buy five percent savings certificates from the banks if they'll sell them to you."

Well, our main customer (depository customer) was the First Federal Savings and Loan Association in Sandy Springs. I had made a personal acquaintance with George West, who was president of the First Federal Savings and Loan Association. And through this acquaintance and through other means, they kept a $100,000 checking account with us. They were our biggest depositor. And when one of their people called me up and said, "Tom, will you sell us $10,000 in five percent savings certificates" and I felt that could be a departure in policy from what the C&S might choose to do.

I had to hedge at the moment. And I made the mistake of, quote, "mistake," unquote, of asking the people at C&S as to what C&S policy was going to be in regard to selling savings certificates to savings and loan associations. And they said that they were not going to do it.

Well, I put this before my board of directors. And they said that "We have no choice but to sell five percent savings certificates to the First Federal Savings and Loan Association." And I was told specifically by Howard **[25]** Starks, who was the then—This was in the year that I left the bank. I was told by Howard Starks—The bank had gotten into some other trouble at that time, which we won't go into at this moment. Howard started being—I don't know. I guess he was officially on our board of directors eventually. But he was supposed to be the C&S liaison man on our board of directors. And they had, in effect, put so much pressure on me during that year involved

with these other things, that I had just about taken all I was going to. And, so, Howard came in and I said, "Howard, I've just about had it." I said, "I'm going to have to tender my resignation." He said, "Well, I'm glad you see it that way because we were going to ask for your resignation." And he told me later that that was the very thing that was the straw that broke the camel's back, so to speak, was when we chose to go ahead and give five percent savings certificates to the First Federal Savings and Loan Association.

So you might say that the C&S wanted to try to run these correspondent associates like branches. But, as a practical matter, it ran into trouble. And I don't know what happened in later years, but I could no longer operate in a dual capacity; doing what my directors tell me on one side and try to do over here what the C&S expected me to do. So I found there was a better way to make **[26]** a living. But I was going to be asked to resign, so I was told, because I wasn't willing to run the bank just the way they wanted it run.

Does that answer your question?

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GX 202

(Title omitted in printing)

The deposition of **Edward E. Elson,** Deponent, taken at the instance of the Plaintiff commencing at 4:30 p.m., July 20, 1972, at the Citizens and Southern National Bank Building, Atlanta, Fulton County, Georgia.

* * * * * * *

[10] Q. All right. Thank you. Was there any discussion in those early meetings as to what name would be used for the bank? **[11]** A. Citizens and Southern Park National Bank.

Q. Do you know whose idea this was to use this name? A. No.

Q. Were any other names considered? A. Not to my knowledge.

Q. Concerning the initial advertising, was there any discussion as to who would do the initial advertising for the bank? A. Who? As an individual who would do the initial advertising?

Q. Well, let me phrase it this way. Would the Park National Bank do their own advertising? A. No. It was supposed to be coordinated through the C&S National Bank. In fact, there was discussion as to the sign, how large Park National's name would be on the total sign.

Q. Was there discussion as to who would pay for this advertising? A. None whatsoever, to my knowledge.

Q. Was there any discussion as to who would perform the duties and handle the charter application, to the best of your knowledge? A. No.

Q. Was there any discussion relative to the [12] correspondent services to be provided by the C&S Bank in these early meetings? A. All discussion centered around the fact that this was a C&S bank, and there was no specific discussion of who would do what. It was just the C&S Bank would be doing it. And when I say C&S Bank, I refer to the C&S National Bank.

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[1] GX 204

(Title Omitted in Printing)

The deposition of **Louis J. Fortuna,** Deponent, taken at the instance of the plaintiff, the reading and signing of the deposition not waived, taken before Alice Ethridge, Deposition Offi-

cer, commencing at 9:30 a.m., August 7, 1972, C&S National Bank Building, Atlanta, Fulton County, Georgia.

* * * * * * * *

[19] Q. All right. Mr. Fortuna, I will show you what have been marked Deposition Exhibits 5 through 10 and ask you if you would please take a look at these. (Indicating.)

Mr. Doyle: Let the record show that 5 through 10 are equivalent to—are copies of documents marked in the other depositions as Presidents' Depositions Exhibits 1 through——

Mr. Lehman: Six.

Mr. Doyle: ——6.

By Mr. Lehman

Q. Have you now had an opportunity to peruse them? A. Do you want to go one by one or all of them?

Q. If you'll take a look at them, please. A. Oh. (Reading.)

Q. Do you recall receiving these documents? A. Oh, yes.

Q. Let me direct your attention, then, to Exhibit No. 6. Could you tell us what this document meant to you when you received it? **[20]** A. Oh, 6.

Q. That would be dated July 28th. A. Now, what's the question?

Q. Could you tell me what this document meant to you? A. Yes. In our operating of a bank, as I indicated earlier, I made a lot of studies and researches, and one of the best places of getting information is from the C&S National Bank wherein they send out information of this kind to let me know that certain changes have taken place in the rate structure of the banking community because this is the Federal Reserve Bank discount rate that we're discussing here and not the C&S National Bank rate. That is how they are telling me of this particular deal.

Now, I used this as a guide only, but it's up to me to decide what rates I'm going to charge. Secondly, this particular rate relationship has to do with prime customers. At the bank out in Sandy Springs we have possibly two or three only accounts that are of this particular category, and we don't have loans outstanding to these companies all the time. So if we do it's up to me to be aware of what the prime rate is because that's what I would have to charge them if and when I made a loan.

Q. I see. Would you then just consider this a **[21]** suggestion, in other words? A. Not a suggestion. It's just information.

Q. Let me direct your attention, then, to Exhibit No. 10. In Exhibit 6, the one we just talked about, it had in the heading: to branch managers, national bank presidents and managers, affiliates and correspondent associates (sic). And Exhibit No. 10 has at the bottom: copies to presidents, correspondent associates—for information only. Was there a difference between the document we saw as Exhibit No. 6 and this document? A. Most of the documents I get have this notation on them. I don't believe there is any difference. It's just for information only.

Q. Then I would direct your attention to Exhibit No. 9. Do you recall if your bank followed this suggestion about keeping drive-in windows open until 4:00? A. Our drive-in windows were open till 4:00. I got there in '64, and I changed the drive-in windows to the 4:00 o'clock hour shortly after I got there. And when this memo came out for our information, our drive-in windows were already open at 4:00 o'clock.

Q. In other words, Mr. Fortuna, you did not consider these memos as directives? A. No. It says for information only. It's up to me with my years of experience to make decisions.

[22] Q. The same is true for those not saying for information only? A. I'd categorize them the same way.

* * * * * * * *

[1] GX 206

(Title Omitted in Printing)

The deposition of **Hubert L. Harris,** Deponent, taken at the instance of the Plaintiff, the reading and the signing of the deposition not being waived, commencing at 9:30 a.m., August 3, 1972, at the Citizens and Southern National Bank Building, Atlanta, Fulton County, Georgia.

* * * * * * * *

[4] Mr. Kinkaid: Will you swear in Mr. Harris?

Whereupon,

HUBERT L. HARRIS

was called as a witness and, having been first duly sworn, was examined and testified as follows:

Cross-Examination

By Mr. Kinkaid

Q. Would you please state your full name and home address? A. Hubert L. Harris. I live at 765 Douglas Road, Northeast, Atlanta, Georgia, Fulton County.

Q. What is your present occupation, Mr. Harris? A. Retired from the Citizens and Southern Bank in Chamblee.

Q. And what position did you have at that bank when you retired? A. President and director.

Q. When did you retire? A. September 30th of last year.

Q. Were you the original president of the Chamblee bank? A. Yes, sir.

Q. And were you a director for the entire time that you were there as president? [5] A. Yes, sir. And I still am a director.

Q. What was your occupation before going to the Chamblee bank? A. I was vice president of the Citizens and Southern Bank of Atlanta at 140 Peachtree.

Q. Excuse me. I didn't understand what you meant by "one point" (sic) Peachtree? A. 140.

Q. Excuse me. I thought you said one point. Right. And how long were you with C&S? A. 46 years at the time I retired.

Q. How did you first find out about the opportunity to go out and be president of the Chamblee bank? A. I had a call from George McKinnon, and we met together and just talked over the group that was forming the bank, and he asked me if I would go out there and work with them, and I told him I would.

Q. Do you recall the group that was actually forming the bank at that time? A. I had not known them prior to this, but it was a group of—The most active ones were Frank Berry, Harry Finn, Dr. Bill Mosher, Roy Goree, Dr. Harris Minter—well, practically all of those that are directors now. Nearly all the directors now are the original directors.

Q. What did Mr. McKinnon tell you as to the **[6]** relationship that would exist between the Chamblee bank and C&S National? A. He said any assistance that I needed C&S would be able to give to me.

Q. At that time did you get into any details as to the kind of assistance that C&S would provide for you? A. No.

Q. When, as a matter of fact, did you get into more detail on the types of assistance that you could get from C&S? A. Well, there was more a feeling that the assistance was there if I needed it. That was really the deep feeling that I had, that I had the whole resources of C&S available to me if I needed it but that in the meantime we had a bank there that needed developing. And we went about developing it, and if we needed

help from C&S, we asked for it. But in the way of running the bank, there is just not much that you have to ask of anyone else because we had to sell the stock first, then find a location, employees. I mean, there's a right good deal of work to be done so that most of it had to be in the field itself where the bank was to be located.

Q. Did you handle much of the work that you just mentioned? A. Yes, sir.

[7] Q. Formally speaking, how did you actually become president of the bank; in other words, how were you actually selected to be president? A. I met with the directors, the group, and we discussed and talked, and they felt that we could work together. At the final formal meetings I was elected.

Q. Did you select the other officers yourself? A. Yes, sir.

Q. How did you go about selecting the employees in the bank when the bank first opened? A. Well, a key employee, who was the operation person, was at C&S but wanted to move away from downtown. Her name is Martha Day. She can run a proof machine. She can run a bookkeeping machine, and we started out with one. So Martha wanted to move out there, and we gave her the opportunity to move. One of the tellers came from Buckhead. And one we hired, as I recall, had been a former banker that lived in the community out there. I mean, it was sort of informal. We used those from C&S that we felt we needed and others we got in from outside sources.

Q. So far as the assistance that you felt would be available from C&S when you needed it, did you have to make any commitments on your own part in order to be assured of getting assistance from C&S? [8] A. No.

Q. Did anyone at C&S—And by C&S generally we'll mean C&S National and C&S Holding. Did anyone at C&S indicate to you that there would be any kind of conditions of any kind attached to the bank's receiving assistance either in forming,

in getting started, or in continuing in operation? A. None. Normally, naturally, it would be understood that we would open a correspondent account here, but that would be just a natural thing. The only instruction or agreement I ever had in going out there was just one sentence from Mills Lane when I talked with him. And I've never talked with him but one time. And that was: "Make it easy for the customers to do business with you." That's the only instruction I've ever had from the time I went out there until today.

Q. In effect, are you saying that from your standpoint you felt free to run this bank with, of course, the approval of the board of directors as you yourself saw fit? A. Yes, sir. But when you go out into a new community—and I never even visited the place; everybody was brand new; I didn't know a customer; I really didn't know the directors—you feel in a big world real lonesome, and having the knowledge that the C&S was backing me gave **[9]** me a great deal of cause to thus enable me to go ahead and make decisions out there based on the fact that I could deliver, that if we didn't have the available lines of credit we could sell them downtown. The services that were needed we could offer them there because the attitude that we took was that we were going to open a temporary building, going to build a permanent building, and we were going to fill that permanent building with customers just as fast as could do it to pay that rent.

And we used every source we knew how to let it be known that we had the resources of the C&S backing us, but we were going to see to it that we were going to give better service out there than C&S gave even, and we did.

Q. How are the salaries of the officers of the Chamblee bank determined? Who sets the salaries? A. When?

Q. Well, if there has been a difference, why don't you start right from the beginning? At the beginning how were the salaries of the Chamblee officers determined? A. I went out

at a certain salary level. For a while we had no means really of setting salaries very well, so we finally arrived at a salary committee of the directors, and the salary committee of the directors sets the salaries, has done so for the past eight years, I guess. **[10]** The cashier and I set the salaries of the employees.

Q. If I understand you then, for something like the past eight years a committee of the directors—— A. I did it before that time.

Q. I see. But for the past eight years there has been a committee of directors who determines salaries of officers and at the same time the cashier determines the salaries of employees? A. I with the cashier; the two of us together.

Q. Right. Do the salaries of employees have to be approved by the board of directors at all? A. Employees?

Q. Yes. A. No.

Q. To your knowledge or recollection, has your salary level at any time been suggested by anyone from C&S? A. We use reference from them as to salary levels of comparable size banks and all. We use it as a reference. And I believe you'll find in the FDIC publications that this is almost nationwide. The size of the bank to a large extent will determine the salary of the president.

Q. And to your recollection, was your salary pretty much in conformance with the findings of the FDIC as to sort of the nationwide average? **[11]** A. Just a little bit higher for the size of the bank, but our earnings were greater.

Q. How did you decide on the initial service charges on checking accounts when the bank opened? A. We took those that were used by every bank in Atlanta. Everyone had identically the same charge at that time. It would be foolish in getting business to try to raise the charge higher than the other banks. We are very much influenced at Chamblee by what the

downtown banks do—all of them. not only C&S but all the banks.

Q. When you say you were very much influenced by all the downtown banks, do you mean all the time that you were at Chamblee or just in the beginning? A. To some extent all the way through. You must be competitive. What I'm trying to say is Chamblee is not Gainesville. It's part of metropolitan Atlanta, so you must be aware at all times of what is going on in the greater Atlanta area.

Q. Did you consult with anyone from C&S at the time you were deciding the initial service charges on checking accounts? A. Possibly I discussed it with George McKinnon. See, I'd just worked with George at 140 Peachtree Street, and possibly we discussed it. I don't know. To me there **[12]** was not anything to discuss. There was one charge and one charge only. Everybody had the same charge.

Q. Were the initial rates that you paid on the various types of savings accounts determined the same way, to your recollection? A. I think we adopted practically the same thing that was in force in Atlanta banks. As I recall, they were all at the same level at that time. Remember, we've gone a long way in the economic world since 1960. Some of these things I just don't remember positively.

Q. I fully understand that. A. I doubt if you'd remember in May of 1960 what you did, so I'll just have to do the best I can on these things.

Q. Certainly. Can you recall, when you first started, what types of savings accounts and time deposit accounts the bank was offering? A. When we first started, there were only two types of savings in Atlanta: passbook savings and formal certificates of deposits. And that's all we had.

Q. By any chance can you recall when you first started offering—I believe what I refer to as—open savings accounts? I

don't know if there is a formal term for it. These are the ones that are on a 90-day basis. **[13]** A. Savings certificates. When money got tight in '65 and '66 or somewhere thereabouts—I've forgotten just when. But as money became tighter the banks, all the banks, had to work harder to get deposits. And each time that an Atlanta bank, whether it was C&S or the Trust Company of Georgia, came out with a new type of savings instrument, we were forced by competition to take it. In the tight money period I saw a million dollars run off in six months out there because of the real high deposits—I mean, investments that were being offered in the 1968 credit crunch.

For example, we did not go into those $100,000 units out there because it was a small bank. We didn't feel like we could establish the countrywide market that was required. So we always had to remain competitive with the other banks, and when they came out with a new instrument, then we came out with a new instrument.

Q. You've just been talking about certificates of deposits; is that right? A. Yes, sir. But that was another type of savings, the 5 percent savings, where you can increase or decrease and still remain on the 5 percent level. The Trust Company of Georgia originated that under their Golden Savings Plan, and Peachtree Bank used it out there on us. So in order to meet the competition with Peachtree Bank and **[14]** Trust we had to go it very shortly thereafter, and C&S was offering it, so we adopted their usage of it complete because we could get their forms, their study of the best method of operating, and we adopted their plan to meet Peachtree Bank's competition. But that is the basis for the change that we made.

Q. Can you recall the year in which Peachtree came out with this Golden Savings Account? A. No, sir.

Q. How did you arrive at the initial banking hours for Chamblee? A. There were two reasons for it. I had worked

in the industrial area in northwest Atlanta, and late Friday I had seen these poor people that would come by with checks as we were going home. They had no place to get their checks cashed, and I felt sorry for them. So when we went to Chamblee we first considered Saturday hours, and the women said that they just didn't see how they could work Saturday, you know. "You're going to have to get a new bookkeeper," and so forth, "if you're going to open Saturday." So what we did was combine something new that had never been done in Atlanta before. We opened the bank from 4:00 to 7:00, which gave us three hours, which would be the same thing as if we opened on Saturday morning.

[15] And we advertised this very heavily—the after-hours banking—so we could give services to those people. In an industrial area like Chamblee you have 30 minutes for lunch; 45 is the maximum. And you cannot get from your place of business to the bank—all of those people cannot and get their checks cashed in that short a period of time. Here was a way to get more deposits.

So it was just interpreting the needs of the area that determined the hours. And for a long time we were the only bank in the Atlanta area that had banking till 6:00 o'clock on Friday.

Q. Was this strictly your idea, or had anyone from C&S made any suggestion that you stay open? A. My idea completely.

Q. In the Chamblee bank who has the authority to change, for example, the interest rates paid on various accounts? A. I don't think it would be done without a good deal of discussion, pros and cons, the cost of the change, how it would affect your customers. I don't think any one individual would make such a change without a good deal of consultation with all the parties that he could talk with to try to arrive at the best basis for it. I think it would be, like Mr. Johnson used to call it, a consensus decision.

[16] Q. Are you saying, then, that the board of directors of Chamblee did not say to you, "It's up to you to change interest paid on savings accounts"? A. I would not do anything of that nature without discussing it with the board.

Q. And would a change of that nature require approval by the board of directors? A. No, sir. I don't think that we would have formal approval, but they would be fully aware. Remember, the directors out there sell. We've got a selling team, new business team, and they have got to be aware of the services the bank offers, of every bit of it every time a change is made so that they can sell the services. We have a competition out there between those directors with two teams. So naturally any changes made in operating procedures they must be given information about so that they can sell these new changes to the public.

Q. Would that be the same situation so far as changing service charges on checking accounts would be concerned? A. I think so. We would not change without their knowledge. We would try to discuss the pros and cons of any changes. And usually with a change of that nature where the public is affected you wait a long time and **[17]** you study it very thoroughly because a customer knows what his basic charge would be and then when you go to change it he gets sort of confused and unhappy. So we would give a lot of thought to any change.

Q. Were you given authority to change banking hours? A. Well, we changed them. I don't know whether I was given authority, but I think it was done after we were open on Friday till 7:00 and we found that we had no customers from 6:00 to 7:00 to amount to anything—only a very few scattered ones. And that meant an extra hour's pay or usually overtime. And therefore it became economically more profitable to close at 6:00 rather than 7:00. So after giving the public several months' notice we started changing it to 6:00 instead of 7:00.

Again it was a long discussion as to the practical side of it. Most all of the things we did were from a practical nature.

Q. When you made the decision to close at 6:00 rather than 7:00 on Friday, did you consult with anyone from C&S in regard to that particular matter? A. We reviewed it with them, yes, I feel sure because I would not want to do something that they were not aware of. If we had any printed material, for example, we'd certainly want the printed material to carry the **[18]** correct hours.

Q. What you just said may be an answer to this question, but I'd better ask it anyway. When you say you wouldn't do something like that without reviewing it with them, what was the reason for reviewing your change in hours from 7:00 to 6:00 on Friday? A. On that particular change I don't think there was much at stake. I don't think there was a great deal of review—more of an information review so they would know what we were doing or a matter of information, but there was very little pro and con regarding the change there.

Q. Before making a change in service charges on checking accounts, would you also review that with C&S? A. Yes. We would, but we have to review more with the area generally than with just C&S because I can't have a charge out there that's too widely—that varies too widely from the other banks because people will move their account from one bank. After all, all the banks have offices around there, and I've got to stay pretty close to what the downtown banks charge.

Now, the downtown banks made one change that we did not make out there, but on the second change which is major we had to go to it, and we went to it.

Q. Could you tell me what each of those two changes was? **[19]** A. The middle change I don't recall at all. We didn't follow it. The downtown banks followed it. I don't know what it was. But the last change where there was a $250 minimum with no charge, that was citywide and was advertised

over every TV program. There was no choice we had except to go to a $250 minimum. I mean, there is no way that you can buck the tide on a thing like that.

Q. Did you review with C&S any changes that you made in the interests rates paid on any of your savings accounts? A. Yes, we did. We wanted to use their forms and their know-how. After all, we had at the maximum 10,000 accounts, and they've got 200,000 accounts. They ought to have more know-how in much of these things than we would have. So we gained all the information we could.

Q. Let me see if I understand what you're saying there. Are you saying that you in deciding whether to make a change in the interest on savings accounts would be seeking information from C&S on whether or not to make the particular change, or do you have something else in mind?

Mr. Doyle: Mr. Kinkaid, I want to object to the form of questions which proceed along the basis of "are you saying" or "are you not saying" because what **[20]** Mr. Harris has said is what he has said. If you want to find out what he means or if you want to find out what the facts are, that's perfectly proper, but it can read as an unfair characterization of the record in terms of "are you saying" or "are you not saying". On the basis of the form there I object to that question and to those kinds of questions.

Mr. Kinkaid: I'm trying really with those kinds of questions to see if I understand what Mr. Harris is saying. I can see where there is a problem. I'm not trying to put words in his mouth. I think that's your objection really.

Mr. Doyle: And an unfair characterization of the record, yes.

By Mr. Kinkaid

Q. Well, can you explain just what you had in mind as the reasons for reviewing with C&S the changes which you speaking of in interest rates on savings accounts? A. Such things as

trends in the money market, also the future availability of money and whether it would be wise to do it. I used C&S every way possible to help in making decisions. I conferred with them on many points there. Then we'd discuss it with the directors and we'd try to get all the information from whatever source we could. We took every banking magazine, periodical, trying [21] to stay abreast of what was going on. So that with many of these things it was just part of the movement in the money market. You had to follow it.

Q. Were you reviewing any of these matters, either interest rates on savings accounts, service charges on checking accounts, with C&S in terms of seeking their approval for what you had in mind? A. Not approval; perhaps concurrence, agreement. It was the wisest thing to do.

Q. It was the wisest thing for whom to do? A. Chamblee.

Q. In making your decisions with respect to changing service charges on checking accounts or interest rates paid on savings accounts or banking hours or interest paid on loans at your bank office, have you ever taken into consideration anything other than the profitability and growth of your own bank; by that, I mean the Chamblee bank? A. We have to stay within the framework of the group that we were working with there, and our profit would have to be considered as an overall relationship that we had. So along the way we found through talking with the public that they wanted the drive-in windows open earlier than 9:00 o'clock, for example, so the change was made there. It was done, and it was found that it [22] was best to give the public a little earlier hours on the outside if they were in their cars so they could get gone. So primarily it was for the profit of the bank but at the same time to stay with the working relationship that helped to make profit.

Q. What do you mean by working relationship? A. Satisfaction of customers.

Q. In your answer when you say working relationship—and I think you also used the word group—tell me who were you including in those terms, group or relationship, C&S National or C&S Holding? A. Well, I know very little about the holding company so far as ever having any day-to-day operation with it. The holding officers are the same as the other officers. I'd deal with the office which would give me the best help. I'd use the devil himself if it would make profit.

Q. Let me ask it a different way, then, and see if I understand you. In making any changes for your bank on service charges, interest rates on loans, interest paid on saving accounts or banking hours—— A. You keep going back to banking hours. We have not made any changes in banking hours except for that one.

Q. Well, then, the other three that I mentioned before banking hours? In making decisions in changing **[23]** any of those three did you in any way consider your relationship with C&S National? A. Oh, yes, indeed.

Q. In what respect? A. If I'm going to get the benefit of the wide market of people moving in from Savannah, Macon, places like that, I must have something comparable to offer. So I got information as to any changes that were made so that we could be in a position to offer comparable services to the customers because people—Hell's bells, in Chamblee two out of every five move every year of their lives. So we had to be prepared for these newcomers that came in every year so we could offer the services they were familiar with. And that to a large extent dictated many of the actions that we had there. I wanted to get the business; I wanted to satisfy them; I wanted to give them that with which they were familiar. So those are the really basic factors that went into the making of many decisions there. It was a market factor, if you want to call it that.

Q. When you say comparable, you wanted to offer something comparable to these people or these newcomers, comparable to what? A. You have the day-to-day savings where a man could

take it and withdraw it tomorrow, like a checking [24] account, and yet we paid a moderate rate of interest. We had other savings certificates that were self-renewing every 90 days without any action on your part. We had those that paid 5 percent or 5½ or 5¾ based on the years that they run, set by the federal government. Then we had the 5 percent savings where you could take in and take out but you could not take it out in less than a 90-day period of time. These were pretty well known throughout the state. We adopted them because they served our needs.

Q. Mr. Harris, I'm still not sure—It may be you are not completely understanding my question, or it may be I'm not understanding your answer. I'm still not sure I understand what you mean when you said that in making decisions, making your decisions, on things like interest rates and service charges one of the things you would consider would be the relationship with the C&S National. Could you try that again and see—— A. Yes. I'd call Bill Thornton. "Look, you're offering a new savings certificate. How is it going?"

"Oh, the public likes it" for so and so reason.

And then I'd call somebody at another office and say, "How is this new program going?" And I'd get either positive or negative answers. And then according to what the competition was doing, if they were offering [25] something we had to meet—But most of these things were done in an easy manner without a great deal of formality. You followed the trade, so to speak, and you put those things in operation.

Q. In other words, were you considering C&S National as a source of market information? A. Yes, sir. They had a larger number of transactions, and I wanted them wherever possible to try anything out to see if it worked rather than me taking it on and spending a lot of money trying it out and have it fail.

Q. Has C&S ever or anyone from C&S ever directed you to charge a particular service charge on any of your checking accounts? A. No, sir.

Q. Has anyone from C&S ever directed you to offer a particular interest rate on any of your savings accounts? A. No, sir.

Q. How about with respect to interest rates on any of your loans? A. No, sir.

Q. Did C&S have the ability in any way to direct you to charge particular service charges on checking accounts or particular interest rates on loans or pay particular interest rates on savings accounts of any kinds? **[26]** A. We'd discuss with them, and they'd give us the benefits that they found in them, and usually it was a concurrent decision. I didn't say this, but I've been in banking longer than most of them down at C&S, and I got information from them. We worked together real close all through the years there. They were more valuable to me than I was to them. I can assure you that C&S National Bank was far more valuable to me than I was to them, and I used them every way I could.

Q. Could you explain what you mean by these things—if I recall your words correctly—resulted in concurrence or agreement? Could you spell out what you meant by that? A. "We found that the new savings instrument will actually bring in the money, and we think if you used it out there it would bring in money for you."

Q. This is someone from C&S talking to you? A. Yes, sir. I'd call and get information. They'd give us their experience.

Q. Did you always reach concurrence with C&S on interest rates on loans? A. No, sir. I always followed different rates than they did on some particular type of loan. On others like prime rate we followed identically because it's countrywide.

[27] Q. In the instances where you had—Well, for example, if you can recall at this time, could you give us any examples of a loan of your bank on which the interest rate would have been different from that of C&S National? A. On construction

loans they used the 1 percent service charge and Chamblee used a 1½ percent service charge.

Q. Did C&S or anyone from C&S suggest to you that you use 1½ rather than 1? A. No, sir. They were aware that I was using it.

Q. When you were active as president of Chamblee, did you feel that your actions as president were in any way controlled by C&S or anyone from C&S? A. My actions were to a large extent controlled by information received from C&S. I made my actions based on reference to material and some of the things that they had tried out in advance.

Q. Well, did you feel that any of your actions were controlled by C&S in the sense that you would not take a particular action unless you had the approval of C&S? A. No, sir. I don't think it went that far. Nobody ever tried to force me at all.

Q. Excuse me. I thought you were going to say **[28]** something. A. No.

Q. Okay. From your standpoint could anybody have forced you to do anything at Chamblee? A. You just don't know how damn stubborn I am.

Q. I take it, then, your answer is no? A. (Nods head affirmatively.)

* * * * * * *

GX 207

(Title omitted in printing)

The deposition of **T. Robert Hazelrig,** taken at the instance of the plaintiff. Reading and signing of the deposition not waived; signing before any Notary stipulated. Taken before William L.

Meigs, Deposition Officer, commencing at 9:30 o'clock, a.m., August 1, 1972, C&S National Bank Building, Atlanta, Fulton County, Georgia.

* * * * * * *

[4] Whereupon,

T. ROBERT HAZELRIG

was called as a witness and, having first been duly sworn, was examined and testified as follows

Cross-Examination

By Mr. Lehman

Q. Mr. Hazelrig, how long have you been president of C&S Executive Park National? A. Since July 14, 1967.

Q. Were you the original president of the bank? A. Yes, I was.

Q. Could you tell me, please, what your prior banking experience was? A. Yes, I'll be glad to. I came to work at the C&S during the summer of 1951 in what was then known as the executive training program, junior executive training program. My first job was checking tapes in the proof department and getting acquainted with bookkeeping operations. After about three months in that area I was transferred to the installment loan area where I learned to handle installment loans, and I advanced during the next two and a half years to manager of direct installment loans. Shortly thereafter I went to the credit department where I stayed almost a year. I then went to the Tenth Street Branch of the C&S National, where I [5] served in various capacities. I set up the credit files for that bank, organized them in accordance with the way the downtown files were set up and made loans and was a customer service person, just sort of a jack of all trades at that branch.

From that point I was chosen to be one of the first members of the Buddy System that C&S was starting where two or three officers, a junior officer, worked with a senior officer in various areas.

And I came down and after a short term became assistant real estate officer at the C&S National Bank. During that time I also handled all the bank's placement of insurance. I also established a C&S-wide, Atlanta area sort of moral and efficiency organization known as the "CS Stars." The main purpose of this was to help the morale and the efficiency of all the employees in the Atlanta area as well as to help us in our competition for the Mills B. Lane trophy for the best bank in the C&S system. Well, the first year, we placed very high; the second year, we won the award. Various other odd jobs which included calling on business developments in the insurance and real estate area principally, and, after about a year and a half in that area —well, about two years, I sort of doubled in brass and went into the national accounts area. I served as a commercial loan officer, real estate officer and did a lot of other things, **[6]** but I also began to travel up in the area of northern Virginia and eastern Ohio, including Canada, making calls on national companies, both there and locally, for their Atlanta counterparts.

I stayed in that position until June of 1962, when I was transferred to the New York service office of the C&S where I concentrated principally on calling for the bank in the New York area but also pretty strongly in the same area I mentioned before, northern Virginia and eastern Ohio, including Canada.

In 1964 I returned to Atlanta, at which time I continued to call in that same northeastern area and locally and took on a few additional minor jobs.

I had expressed an interest while I was in New York—since I was in national accounts for such a long time and I felt that I might utilize my talents in other areas better—an interest in

setting up a bank of my own as I knew that C&S was sponsoring a number of banks around in areas where they could not locate branches, and in November of 1965, on Thanksgiving Eve, I was approached by the chairman of the board, Mr. Glenn, and Herb Dixon, who then, I think, had the title of vice president, about the fact that Mr. Handley and Mr. Starks wanted to talk with me about starting a bank for C&S. They also told me they would like for me to stay in a more important position in national accounts but that they [7] would let me make up my own mind about that.

I talked with Mr. Starks and Mr. Handley, and, after much thought, I decided that I would like to start a bank of the sort, the 5 percenter type, and I began in about February of 1966 to do so. And from 1966 to 1967, in early July, I continued to sort of work in national accounts; I did a lot of trust work and organized the bank all at the same time.

And that brings us up to the point of my becoming president of the C&S Executive Park National Bank.

Q. In these early discussions with Mr. Handley and Mr. Starks, what was discussed concerning your relationship between the two banks, what the relationship would be? A. That, I don't believe, was discussed. I knew that this was a C&S sponsored bank, but I don't think that we discussed it at all. The C&S could not go into the Executive Park area with a branch by the existing laws at that time, and a lot of our customers, a lot of the C&S National Bank customers, had moved out there, a number of which I had solicited when I was in the national accounts division. The Sinclair account, which I happened to solicit, the American Oil, all these people wanted to have banking close to them. And I understood that that was one of the things that C&S National was trying to do. But we really didn't go into a lot of detail about that. I don't remember anything other [8] that reference that we needed banking in that area and that the customers wanted C&S banking out that way.

Q. Now, you had been with C&S National for approximately 15 years when you made the break to Executive Park National? A. Yes.

Q. What prompted you to leave C&S National to go into Executive Park National? A. I didn't really feel that I was leaving. In fact, I made the remark that, although technically I was resigning to take on a new position, I made it quite clear that if my talents could be ultilized downtown in a more important job for C&S than as president of that bank that I would not be forgotten. I made it clear because I didn't want to be forgotten if there was something better for me to do downtown.

Q. Did they make it clear that you would not be forgotten? A. That is true.

Q. Would you consider, then, your becoming president of the Park National Bank a stepping stone in your career with C&S National? A. Yes, I felt that it was a very good career for Bob Hazelrig, who had a liberal arts background, an A.B. in English and a Masters in English Literature, to become a banker and to see, really, what he had learned in 15 years [9] and also an opportunity to do something that maybe I and C&S would be real proud of.

Q. Who selected you as the president of this bank? A. Legally, the board of directors. However, I'm not really sure; Mr. Starks and Mr. Handley were the ones who told me that I would go out to this bank as head of the bank, but actually the board in June of 1967 elected me president just prior to the opening of the bank.

Q. Who selected the other management employees of the Park National Bank? A. I did myself.

Q. How did you select these people? A. I first figured out the positions I would need, and then I started going for the best people I could find. I was told that people would be available

from C&S. I wanted C&S trained people if possible. Actually, my cashier I went outside the bank to get, a young man who had been, maybe—at least he felt he had been overlooked at C&S and had left the bank a year before, but C&S was very sorry he left and they were delighted to see that I was interested in getting him. I got him back for the bank. He was C&S trained; I think at that time he was with a finance company, I don't know the—or Westinghouse Electric Credit Corporation, I believe. But he was a C&S trained person, and I got him because he had been highly recommended to me. Various other people I just **[10]** got in my talking with various people around the bank. Sometimes I went around circuitously and found good people, and if they wanted to volunteer for the job, the bank looked with favor upon their working with me.

Q. Were some of these people selected not C&S trained people? A. No. Since the bank has opened we have hired other people outside the bank, but we have hired them through the C&S National Bank. We pay them a fee to do that for us.

Q. Are you presently a director of the bank? A. Yes, I am; chairman.

Q. Have you been since—— A. Yes, always since the beginning.

Q. When the bank was forming, did you make any type of commitments to C&S as far as obtaining their assistance in helping form the bank? A. No, I did not.

Q. By the same token—— A. I assumed that I would get quite a bit of cooperation from them, and I got it. But we never discussed it. There were never any written or verbal agreements of any sort.

Q. I would also ask that question as to the continuing assistance as opposed to the organizational assistance? A. The same answer would apply.

Q. Did C&S attach any conditions to the formative [11] assistance given to your bank? A. No. If I understood the earlier question, we did enter into a number of agreements after we opened for such things as bookkeeping service, computer service and so on, data processing.

Q. The normal correspondence service? A. Yes, the normal correspondence service.

Q. Did you utilize any other bank as a correspondent bank? A. Yes, we did; the C&S Emory—first of all the C&S DeKalb Bank and then later the C&S Emory Bank.

Q. Any bank outside the C&S family? A. No. We had a lot of them who called on us, but we didn't feel that they offered good services.

Q. Now I'll get back to my second question as far as were there any conditions to the C&S continuing assistance? A. No, there were not.

Q. Does the board of directors in your bank fix your salary? A. Yes, they do.

Q. Do they fix the salaries of the other officers in the bank? A. No, they do not.

Q. Who does that? A. I do.

[12] Q. Are you also the approving authority for the salary as to the other officers? A. Yes, and also the employees.

Q. Does the board of directors play any part as far as the approval is concerned of the salary of the other—— A. No, only in the election of officers and the promotions of officers, titularly.

Q. Is it proper to say that you are the final approving authority for the salaries of the officers other than yourself? A. I'm the originator and the final approving authority in that situation.

Q. Is this approval given by you subject to C&S approval at all? A. No, it is not. Sometimes—I would like to add this—sometimes I discuss with them what I'm planning to do. I don't always do this. I remember one situation where I was going to do it, but—I think it was something like a very healthy raise, and, realizing that this person had come to the bank with the understanding that he would stay and accomplish a good job at C&S Park National, he also had been given an understanding—not any type of legal, written agreement, but he had hoped to do big things in the C&S National Bank, and before giving this rather sizable raise to this young man I wanted to consult with them so that they [13] would be happy with my choice. I felt that it was well for them—we had two advisors on our board, and I really think I consulted with the advisors rather than the C&S National Bank, but they were people who knew a little more about the salary situation in banking than I did.

Q. Who recommended your salary, if you know? A. The board of directors.

Q. Is this subject to any C&S approval, C&S National approval? A. No, it is not. However, the board usually defers to one of our two advisors for an appropriate amount. In such situations I have been asked to leave the room, and I am told—well, let me put it another way; I understand that they do defer either Mr. Handley or to Mr. Don Ingram as to what would be an appropriate raise for me. Those advisors, incidentally, are advisors to the board.

Q. Do they have a vote? A. No, they do not.

Q. Who decided on the initial rates as far as interest paid on savings accounts and services charges at your bank? A. In our meeting in June, in the last meeting of the organizing directors, I was given authority to make various management decisions, which included rate setting. I made these decisions based on competitive situations in the area. I made these rate decisions

on loans, savings and all other [14] types of things—within the limits of the law, of course.

Q. Did you also make the decision as to your initial banking hours? A. Yes. I did. These were approved at the last meeting of the organizing directors in July 1967, just prior to our opening. They were approved by the board of directors.

Q. Is it safe to say that the board of directors, then, in these instances ratified your decisions? A. There was always discussion. They have always approved my recommendations. Perhaps once or twice there were some changes based on what they thought or what they wanted.

Q. They've given you pretty much free rein as far as the bank is concerned? A. Yes. Yes, they have.

Q. Did you have the authority—Are you the one vested with the authority to change the interest rates now on savings accounts, paid on savings accounts? A. Would you repeat that question?

Q. Okay. Are you now still the one that changes the interest rates paid on savings accounts if there is to be a change? A. Yes, I am. We've made very few changes in the five years.

Q. Can you think of some changes that you have made as far as interest rates? [15] A. Yes, but I don't remember the dates. We did add a package of loans, so-called 5 percenter loans, and there were some changes in the certificates, or they varied by length of time. But these, once again, were done because they were being done by C&S and also by C&S competitors and by C&S Park National competitors, too.

Q. Are you also the one who has authority to change interest rates charged on loans? A. Yes.

Q. And the same as far as service charges on checking accounts? A. Yes.

Q. Perhaps we covered this area before, but from where did you derive this authority? A. From the board at our meeting in June 1967 before the bank opened.

Q. Have you had an occasion to change the interest rates paid on loans since the bank's inception? A. Yes.

Mr. Doyle: I assume that means charged on loans?

By Mr. Lehman

Q. Yes, excuse me; interest rates charged on loans. A. Charged on loans, yes. In fact this is done sometimes daily. We are in a rather highly competitive area. The Trust Company of Georgia came out last year with—oh, 5¾ percent **[16]** add-on rate on automobile loans or some of the finance companies were lowering their rates. We needed loans very badly. We've been strictly a—we have not been strictly, but we have been a pretty good depository bank, but loans have been very hard to get for us, and so in an attempt to increase our loan volume we have many times altered rates according to the individual and according to the competitive situation in our area. And we do this regularly now.

Q. In making these changes that you have made over the years at your bank that we've been talking about, have you ever taken anything into consideration other than the best interest of your bank at Park National? A. Yes, the best interest of our customers and prospects.

Q. Anyone else? A. No.

Q. Has C&S National ever directed you to change interest rates charged on loans? A. No, sir.

Q. I'll ask the same question as to service charges on checking accounts? A. No, sir.

Q. And interest rates paid on savings accounts? A. No, sir.

Q. Do you feel that C&S National has the ability to dictate any policy or program in your bank? **[17]** A. No, sir. How-

ever, I was a C&S trained person; I liked the way C&S did business. I was very largely influenced by them while I worked here, and I have been largely influenced by them since I have been president of the C&S Park National Bank. It's a desirable influence. I feel that C&S does more to try to help the people in Georgia than any other bank. If I left the bank today I couldn't go to work for another bank in Georgia, because I feel that strongly. And I've sold it. It's my job. As you probably can tell from my resume, I have been selling most of the time. I'm a pretty honest fellow, and I don't think I could—one time C&S, when I was at C&S National Bank, came out with a savings package which was not competitive, but that's the only time in my 20 years of being associated with the C&S Bank that I couldn't sell because I didn't believe in it. I believe in C&S, and I sell C&S. I sold C&S while I was at C&S National, and I sell C&S and C&S Park National where I am now.

Q. Do you feel their programs are competitive now, the various programs? A. C&S National?

Q. Yes. A. Yes, I do.

Q. Are your bank's programs competitive? A. Yes, sir. I hope so, and I think so.

Q. Do you attend these Wednesday morning meetings, I [18] it is, at the bank? A. What do you mean by "these Wednesday morning meetings"?

Q. The Wednesday morning meetings. A. I do happen to attend a Wednesday morning meeting, but I used to attend a Monday morning meeting, and I think it has been on various days. I'm not really sure which meeting you're talking about.

Q. Well, these are the meetings of the presidents of the various correspondent associate banks and affiliate banks. A. Well, I come to two meetings on Wednesday. Since I left the C&S National Bank I have been invited to attend the presidents' so-

called Wednesday morning meeting, which starts at—it's a 7:30 or 8:00 o'clock meeting which starts at 7:00 o'clock. I have tried not to miss any of these meetings because I think Mills Lane is an amazing man, and even if the meeting lasted only three or four minutes, they were always worthwhile to skip breakfast and come down and hear him.

I might clarify further that not only was I as president of an associate bank there, but all the officers of the C&S National Bank came at various times; they had various people. They even had a few regulatory authorities and may even have had some Justice Department people there on occasion. It was a meeting to which the general public was—well, the general public was not invited except upon a formal invitation. **[19]** This usually was over—and I have continued since Mr. Kattel became president and I don't like to miss those meetings because I always learn something of economic value about what's going on in banking, and they are a worldwide banking organization, and I find out a lot of things I am very much interested in. At 8:00 o'clock, if the Lane or Kattel meeting were over, I then, as of the past six months—these meetings would vary from time to time—attended a credit meeting which was attended by the presidents of some of the other 5 percenter bank. Sometimes one of the C&S National Bank officers would be there. Usually that person would be a person who was in an advisory position to the banks, and we would swap ideas and review some credits and compare notes and, after the fact, get a reading of the minds of the other presidents and sometimes cashiers and various management associates, and it's a swapping of ideas.

A lot of the young men—I think I had a pretty strong credit background, but there were a lot of the young men who were presidents of the banks who—it was all sort of a relative situation as to the degree of experience these men had, and some of the guys with more experience imparted ideas and helped to educate the younger guys with less experience, and then some of the younger guys would give us some real bright

ideas, also, and I was not invited to attend this—I didn't know about this meeting until the first year or so that [20] my bank was open. But since I found out about it I've tried to attend that every time it comes up, which usually is weekly.

Q. Is your attendance at the earlier meetings, is that a mandatory attendance? A. No, sir.

Q. As to the second meeting on Wednesdays, in the credit meeting, just what is the purpose of this meeting? A. Well, I thought I answered that. The purpose of the meeting—the major purpose would be to impart ideas for presidents—well, for the officers of the 5 percenter banks, to impart ideas to each other regarding lending policies of the banks, of the respective banks, and to benefit from actual reviewing of loan situations.

Q. You actually review loans that were already made? A. Yes, sir, we do, I think our guideline is loans over $25,000. We review these. I feel reasonably sure that certainly all of us have benefited from the—oh, analyzing financial statements; various of us analyze financial statements and put emphases on certain things in different ways, and I think that all of us have learned from this. And, of course, this has been very educational to all of us. I think the main value of it is to help each other to edify ourselves in the area of lending and also to keep—one of the benefits I find is that occasionally one of our associate banks or [21] sister banks would be banking a mutual customer, and we are always interested in this because we generally don't like to—we like to keep up with our customers, and occasionally we can find that somebody we thought banked exclusively with us banked at one of the other C&S associate banks, and this gives us an opportunity to put some curbs, if necessary, on that situation.

Q. In this discussion of credit, do you establish guidelines to be followed at these meetings as far as—— A. Do I establish them?

Q. I mean the people at attendance at the meeting, various people.

Mr. Doyle: I'm sorry; I didn't hear the question. Do you establish guidelines for what?

By Mr. Lehman

Q. For your credit programs in the banks.

By Mr. Doyle: Establish guidelines for your credit programs?

Mr. Lehman: Yes.

The Deponent: Shall I proceed?

Mr. Doyle: Yes.

The Deponent: Yes, we do, but these are changing guidelines which we ourselves change. There usually members of the C&S National Bank Credit Department there; we utilize them to spread statements. I can't, with the various things **[22]** I do, spread all the statements, financial statements, and get various information ready for these meetings or for reviewing their own credit prior to making loans. They are there. Most of these men are relatively new with the bank and are sometimes head of the credit department. Through them sometimes the advisory C&S banking officers, occasionally the head of the C&S National Bank Credit Department attend these meetings to bring us up to date on new angles in lending, and we change our guidelines. They are pretty well cut and dried, though; it's not all that complicated. We vary them according to what's most beneficial to us, we think.

Q. I have some documents here that were produced in response to our interrogatories, and if you would I would like for you to take a moment and just look through these (presenting). A. All of these? Do you want me to take them one at a time?

Q. No. I just want to ask you some questions about them afterwards. A. All right.

Q. First of all, have you received documents such as these? A. Yes, I have.

Mr. Doyle: Wait a minute; I object to that question. **[23]** What is a document "such as this"?

Mr. Lehman: As the ones I've shown him.

Mr. Doyle: Well, I object to the question as being vague and ambiguous. I don't know what a document "such as this" is. If you mean "Have you received copies of the same piece of paper," I think that's an appropriate question and we could reflect it accurately in the record. I don't know if that's your question. I'm not trying to suggest your question, but I don't know what a "document such as this" is.

Mr. Lehman: Well, I'll change it, then.

By Mr. Lehman

Q. Have you received copies of these documents, to the best of your knowledge, at Park National? A. I have received memoranda similar to these, and these may well be copies of the ones I have received.

Q. For what purpose do you receive such memoranda? A. I noticed on these that there were—out of these eight or nine, there was only one that had "For information only, correspondent associates." The C&S, as an aid to us, since we opened our bank, I didn't like the thought that I would be leaving the C&S National Bank and just getting completely out of touch with what they were thinking about and doing. We get copies of the "Southern Citizen," the house organ; we get copies of their memoranda, certain **[24]** memoranda which they feel may be helpful or of interest to us. I think probably—I see now that there are two that say "For information only" as pertains to correspondent associates. I assume these are being sent to me as guides which I myself would use for that purpose in thinking about interest rates and banking hours and so on. It's of interest to me to know what's going on in the C&S National

Bank. I like the way they do business. It's also of interest to me to know what the people across the street are doing. They have several competitors, and I like to know these things.

C&S is nice enough to keep me apprised of what's going on, and I use this information that they send me. Mr. Pfaff, I think, has written most of these. Before, other people have sent other memoranda that they felt would be helpful to me, and I have used them to good advantage. But I use them as information only.

Q. We discussed the one——

Mr. Lehman: Excuse me, Mike.

Mr. Doyle: I object to the testimony proceeding in this way because we are talking about documents which are not presently identified in the record. Unless these documents are made a part of the record and for that purpose, I object to this entire line of questioning as to a matter of form on the ground that it is ambiguous and misleading unless the documents which are basically the subject matter of the **[25]** testimony are also made a part of the record. And if that is the case, then I ask that they be so marked and identified at this time in order that Bob's answers will be keyed in on the record for the sake of clarity, and we will all know a month from now what it was we were talking about.

Mr. Lehman: Off the record a minute.

(Off the record discussion.)

(Documents were marked as Presidents' Deposition Exhibits PD-EX 1 through PD-EX 6 for identification.)

Mr. Lehman: The documents that we have been previously referring to have been marked Presidents' Deposition Exhibits 1 through 6. The two exhibits we were discussing containing "For information only" to presidents, correspondent associates were Exhibit 5 and Exhibit 6.

By Mr. Lehman

Q. Mr. Hazelrig, I will now show you what has been marked Presidents' Deposition Exhibit No. 2 for identification. This one has no "For information only" on it, and I notice in the heading it's to the branch managers, presidents of affiliates and presidents of correspondent associate banks. For what purpose would you receive this document? A. Am I on record with my previous answer, the last answer pertaining to some of these documents?

[26] Q. Right. A. For information only. That is the reason for receiving this, I assume for sending it, and I certainly considered it as a helpful aid.

Q. If you know, why would one memorandum be termed "For information only" as far as the presidents of correspondent associates? A. Well, I assume for about the same reason my secretary frequently forgets to put a copy to somebody. I think this may be very likely just an error of omission. But the C&S National does not dictate rates to us. This is for information, as an aid to us. I'm sure that's the reason they send it.

Q. If I may summarize as to the correspondence that has been marked Deposition Exhibits 1 through 6, the purpose of your reception of these is merely for information only purposes to keep you apprised of what—— A. C&S is thinking and doing; yes.

Q. These are not directives, then? A. Absolutely not.

Q. Is there any time that you have followed the advice contained in these memoranda that you have received, to the best of your knowledge, as to rate changes, perhaps? A. I don't know. I read the Wall Street Journal and I read the American Banker; I read these memoranda and I try **[27]** to keep up to date on what's going on in banking, and I could well have followed the advice, if you call it advice. I call it information.

I have heeded the information to the extent that I felt it would be beneficial to our bank and to our customers.

Q. As president of Park National, do you feel that you were controlled by C&S National in your workings as president of Park National? A. I'm not controlled by anybody, personally; as an officer of the bank I am controlled to the extent that I want to do things by the board of directors. Because I like the influence of C&S, if they ever asked me to do something that would be helpful to them, I would do it. Once again, I say I like the C&S style of doing business, which I think started with Mills B. Lane, Jr., and I am not a controlled person. I have a little creativity of my own, and I don't really like to think of myself as controlled by anything but maybe God.

Q. In this last answer of yours, you have stated in the first portion of it that if C&S asked you to do something, you would do it——

Mr. Doyle: I object to that characterization of the testimony because that is not the way it was put, and I object to the characterizations of testimony when they are not accurately reflecting the testimony on the record. The **[28]** record shows what it does show, and I have no objection to your referring to prior testimony, but I do object to your attempting to summarize it when you do summarize it incorrectly as you did in that last question. The record speaks for itself.

Mr. Lehman: Could you read back his last answer?

(Reporter read back last answer.)

By Mr. Lehman

Q. Based on your last answer, Mr. Hazelrig, if C&S were to ask you to do something that would be helpful to C&S, yet would not be in the best interest of your bank, would you do what C&S requested? A. No, sir.

* * * * * * *

[1] GX 208

(Title Omitted in Printing)

The deposition of **Dr. W. Andrew Irvin,** Deponent, taken at the instance of the Plaintiff, reading and signing of the deposition not waived, before Roberta Newberry, Deposition Officer, commencing at 3:30 p.m., July 27, 1972, at the Citizens and Southern National Bank, Atlanta, Fulton County, Georgia.

* * * * * * * *

[12] Q. Did you also discuss in these earlier meetings as to what name the bank would take? A. As far as I was concerned, it was always the C&S Bank. That's all we've ever had up there. We've had a big sign, "C&S".

Q. Who came up with the original idea for the name? Was this the thought of the three directors? A. Well, as I said, when Archie Lindsey called me, he said, "Would you like to help form a C&S Bank of Roswell?" And I said, "Sure." So that was it.

Q. Do you know who handled your charter application? A. No, I don't. As I say, as far as I was concerned, this was the C&S Bank of Roswell.

Q. Was there also discussion at this time as to which bank or banks you would seek to act as your correspondent banks? A. As I said, we were a C&S bank.

* * * * * * * *

[18] Q. From the time the board of directors met after the opening of the bank, has there ever been a C&S National person sitting on the board? A. We've had an advisor at all times.

Q. From the beginning? A. From the very beginning.

Q. What is his function? A. Advisor. He has no vote.

Q. He has no vote? A. He's an advisor.

Q. Do you request advice or does he offer advice? A. We expect advice when we need it.

Q. In other words, he would offer you advice? A. Oh, yes. That's what he's there for—to help us in anything we need. We don't profess to be bankers.

* * * * * * *

[1] GX 209

(Title Omitted in Printing)

The deposition of **Hugh F. Lane,** Deponent, taken at the instance of the plaintiff, reading and signing of the deposition not waived; signing before any Notary stipulated, before Volney Barker, Deposition Officer, commencing at 3:00 p.m., Wednesday, August 8, 1972, at the offices of Alston, Miller and Gaines, 12th Floor, C&S National Bank Building, Atlanta, Georgia.

[2] Appearances of Counsel:

For the Plaintiff:
Neal Lehman, Esquire
1776 Peachtree Street
Atlanta, Georgia

For the Defendants:
Alston, Miller & Gaines
By: Walter M. Grant, Esquire
C&S National Bank Building
Atlanta, Georgia

[3] CONTENTS

Witness	Direct	Cross	Redirect	Recross
Hugh F. Lane	5	55	57	..

[4] PROCEEDINGS

Mr. Lehman: In our discussion today I will probably be referring to C&S National, and when I do, I will probably also be referring to their affiliate banks and C&S Holding Company. I will probably be using them interchangeably as opposed to the correspondent associates, the five percenters, which I shall call the five percenter correspondents.

Mr. Grant: Excuse me. So I can understand this, when you say C&S National, that means C&S National?

Mr. Lehman: Branches and affiliates.

Mr. Grant: Branches and affiliates?

Mr. Lehman: Yes.

The Deponent: In East Point and DeKalb?

Mr. Lehman: Right.

Mr. Grant: Does that include C&S Holding?

Mr. Lehman: I may use them interchangeably, but I'll spell it out when I use the correspondent associates. I'll try and be as specific as I can.

The Deponent: Fine.

Whereupon,

HUGH F. LANE

was called as a witness and, having been first duly sworn, was examined and testified as follows:

[5] **Direct Examination**

By Mr. Lehman

Q. Would you please state your name. A. Hugh F. Lane.

Q. What is your present home address? A. 5555 Wright Road, Northeast, Atlanta, Georgia.

Q. What is your occupation? A. I'm president of the C&S Bank of North Fulton.

Q. How long have you been president of this bank? A. Since the bank was originated. We opened for business in June of 1967.

Q. Prior to your becoming president of North Fulton, what was your occupation? A. I was an assistant vice president with the Citizens and Southern Bank of Sandy Springs.

Q. How long had you been with the C&S organization? A. Since May of 1960.

Q. How did you happen to find out about the position of president of C&S North Fulton, if you recall? A. Yes, I recall. I was called in by Mr. Louis Fortuna, who was the president then of the Citizens and Southern Bank of North Fulton—I mean—excuse me—Sandy Springs—and he informed me that we had a group interested in organizing a bank in Roswell, and that I **[6]** had been selected to run the bank, if I so desired.

Q. By whom had you been selected? A. By the Board of Directors.

Q. Had you met the Board of Directors prior to that time? A. I had known them, most of the Board of Directors. The originators, I might call them, were customers of C&S Bank that lived in Roswell. For instance, Dr. Andrew Irving, Archie Lindsey, Harold Benson. All of these fellows banked with the C&S Bank, and I had known them personally before.

Q. Did you also discuss this fact of your going to North Fulton with anyone from C&S National? A. No, I didn't. I was delighted to have the opportunity to serve in this capacity. It was a real challenge.

Q. Why did you consider it a challenge? A. Well, any new business in an area like Roswell, which was rapidly—Well, at that point in time it was not growing as rapidly, probably, as

Sandy Springs, but it was inevitable that it would be a future growth area, primarily because it's a bedroom life community, as is Sandy Springs, bedroom industry, but a lot of influx of newcomers.

Q. Would you consider the opportunities for North [7] Fulton as good as they would have been in Sandy Springs? A. Yes.

Q. Speaking in a business sense, promotions, things like that? A. Yes.

Q. Were you also one of the organizers of C&S North Fulton? A. Yes. Well, the decision to attempt to charter a bank in Roswell had been made when I was brought in, and from that point on I was given the ball to carry, to get together the charter application, submit the charter application to the state and FDIC, and start the bank from scratch, build the building, locate the property, name the bank.

Q. Were you told of what the relationship between C&S National and C&S North Fulton would be by Mr. Fortuna? A. Of the relationship between C&S National and C&S North Fulton by Fortuna?

Q. Yes. A. I don't think it was necessary. I had been with C&S long enough that if it was going to be a C&S bank, I felt that I knew what the relationship should be.

Q. Were you also one of the original directors? A. Yes, I was.

Q. Are you chairman of the Board of Directors? [8] A. No. I was acting chairman until recently, and we elected Dr. Andrew Irving as chairman of the board.

Q. When was Dr. Irving selected? A. This was the early part of last year, '71, and re-elected at the annual stockholders meeting, at the first directors meeting after the annual stockholders meeting in '72.

Q. Now, you have mentioned you were selected by the Board of Directors as president? A. As I understood it, they were given a choice of people. They knew me. They knew that I had lived in the area, and that I had worked in Sandy Springs for four or five years, and they felt that of the choices, I assume, they were given, that I was the man.

Q. Do you know who the others were, the other selectees? A. I have no idea.

Q. Did they also—did the Board of Directors also select the other management of the bank? A. No, they did not. I did.

Q. From where did you select these people? A. There was only one other officer of the bank to be selected, and this young man came from C&S National.

Q. What was his name? **[9]** A. Ted Mackey, who at the time was not an officer of the bank. He was in the auditing department, and operation oriented.

Q. Had you also selected the other employees of the bank? A. Yes, I did. I had each one of them—I interviewed them and had them screened through the Personnel Department of the C&S National Bank, because they were better equipped to do this, naturally, than I was. Then we put them to work in the various branches after an orientation period and screening period until our bank was ready to open.

Q. Excuse me. Did C&S train these people also? Is that my understanding? C&S National? A. Yes, they did.

Q. Did you pay for the service, as far as this training was concerned? A. Yes, for each person that they screened or interviewed or orient or train, we pay them for the service.

Q. I see. How would you make—What was the procedure, that you would make it known to C&S National Bank that you needed, say, an officer or employee? Was there a set pro-

cedure that you would go through? A. No set procedure. I just simply let it be [10] known through the Personnel Department that there was a need.

Q. What banks are your correspondent banks? A. C&S National Bank and the affiliates of C&S National, all affiliates, although we have one that we had an account with other than the National Bank, and this was at my discretion.

Q. Did C&S National offer you or give you formative assistance in starting the bank in North Fulton—excuse me—at Roswell? A. Yes, they did.

Q. Whom did you request this assistance of, or did they offer it, if you recall? A. Well, I requested the assistance. I had never chartered a bank. I was familiar with the feasibility studies and things of that nature that were required by the State Banking Department to justify a competitive bank in a town that had only one bank, but I needed all the assistance from the Marketing Department and Personnel Department at C&S National that I could get, and I didn't hesitate to call on them.

Q. Were there any commitments made by you in order to receive this assistance from C&S National? A. None whatsoever.

Q. I might ask the same question as to the continuing assistance, rendered you by C&S National. [11] A. Yes. I have never hesitated to call on the C&S National Bank for any reason whatsoever, relating to personnel, to loans, to procedures, security procedures, policies that I was not clear on.

Q. I think my question was as to the continuing assistance, and not as opposed to the formative assistance. There were no conditions attached to the C&S providing you this assistance? A. Would you define your conditions.

Q. Okay. For example, would you have to keep a cash balance with C&S National, or you would have to use them solely as your participants in loan participations? A. No. I would, of course, prefer to use it.

Q. There has been some mention by other presidents as to the C&S style of banking. Are you aware of the C&S style of banking? A. Yes, I am. I would like to think we are the most aggressive, most qualified. We try to find ways to make things happen.

Q. Do you know of any other style, any other trained in any other style? A. No, I haven't. I had no desire to be.

Q. When you left Sandy Springs to head North Fulton, C&S North Fulton, were you expecting to run that **[12]** as a branch of C&S National? A. No. It was the C&S Bank of North Fulton, a separate entity. However, I did allow it to follow as closely as I could the C&S procedures for running a bank.

Q. Right. But you were free to run it as you saw fit to run it? A. That is correct, with the directors behind me, of course.

Q. Who fixes the salaries of the officers in the bank? A. Our directors.

Q. Who fixes for all officers—— A. No. Excuse me. I am the president, and I fix the salaries of the other employees, including the officers.

Q. When you fix the salaries of the other officers, do you have to seek approval from the Board of Directors before any increase? A. No, I do not. Routinely I do for the officers, but they only have one officer, and as far as other employees are concerned, it is left to my discretion.

Q. So in recapping as to the final approval to the officer's salary, that would lie with the Board of Directors? **[13]** A. Not necessarily, but as a courtesy I recommend to them, and if they have some qualms about my recommendation, then of course they are very vocal, and they can express their own opinion.

Q. How was your salary determined? Do you know? I would imagine that it would be determined by the Board of

Directors based on the job that was being done. A. You mean originally or presently?

Q. Presently. A. Presently I think it would be based on what we had accomplished.

Q. Now, let's go to originally. Do you know how it was determined? A. Well, they knew what I was making. I assume it had been discussed, and I would say it was a nominal increase for taking this additional responsibility.

Q. When you left Sandy Springs, did you have to forsake, for instance, your pension plan or your profit sharing plan? A. I did not.

Q. Were these carried over when you went to North Fulton? A. Yes, they were.

Q. Were these plans—— A. They were adopted originally by our bank.

[14] Q. Okay. A. We elected to go with the C&S National Bank's profit sharing and pension fund, so that those that are leaving C&S banks and going to other opportunities like C&S North Fulton do not have to give up these.

Q. Do you know if your salary or the salary of any other employees of the bank is subject to any kind of approval from C&S National? A. I know for a fact that it is not. My board might from time to time ask for recommendations, but whether or not they abide by these recommendations, I couldn't tell you.

Q. From whom would they ask these recommendations? A. I would imagine it would be the advisory board member from C&S National.

Q. Who is it presently? A. Presently it's Charlie Hoskins.

Q. I take it he has not been with you from the beginning? A. No, he has not. Would you like them in——

Q. No, it won't be necessary. Somewhere along the line we've referred to most of the advisory directors. Who decided the initial rates on interest to be paid on savings accounts? A. Well, generally the rates—there are guidelines for savings accounts that are set up by the state **[15]** regulatory authorities. However, having been familiar with the C&S systems rates and whathaveyou, I elected to go along with the rates that they were charging at the time.

Q. Now, as to the rates set by the regulatory agencies, the payment on maximum—— A. Maximum.

Q. Maximum? A. Yes. And I think you'll find that most of the banks in town to be competitive have more or less stayed very much in keeping with the maximum allowed.

Q. Did you just look to the C&S savings interest rate that they were paying, or did you look to what your competition in the area was paying? A. Well, the competition in the area certainly had a lot to do with it. I might explain a little about the competition in the area. North Fulton, as the name implies, encompasses Roswell and the City of Alpharetta. There was one bank in each town, one finance company in each town, and one savings and loan association in Roswell. At one point in time, at the point of origin of our bank, all of these banks were owned by the same person. All of these institutions were owned by the same man, with only enough stockholders outstanding to have a board of directors.

[16] Q. Was this man Mac Robins? A. No, it wasn't. It wasn't at the time. Later it became Mac Robins and the same situation exists now. Not having had a competitive situation, I then used more or less as a guideline what the competition was doing, and this did not necessitate possibly my paying the maximum, charging the minimum, or whathaveyou.

Q. But your rates were competitive, as far as interest? A. Correct.

Q. Who decided your initial banking hours? A. I did.

Q. How were these determined? A. These were determined again. You were going into a new situation in a town, I felt that we should have at least as much to offer the public as they had, plus possibly a little more. Our hours are different from any other C&S bank, although they are similar in a sense. We open at 9:00 o'clock. That day's work ends at 2:00. We then open from 2:00 until 5:00. Both drive-ins and inside windows from 2:00 until 5:00. The competition was open until 2:00 and closed. They then started opening until 4:00. Still we were open till 5:00 on Mondays, Tuesdays, Thursdays, and on Friday we were open till 6:00, from 9:00 until 6:00, straight through. **[17]** On Saturdays we're open from 9:00 until noon. And that's the difference there. It started that way, and it has stayed that way.

Q. So, again, you looked at what your competitors—what their hours were? This was one of the deciding factors? A. We start with the country banks, and that is the correct terminology, I believe, for banks in the outlying area. They stayed open on Saturday, so they were open on Saturday, and I certainly wanted to offer as much if not more.

Q. Did you ever consult with C&S National as to the determination of these initial banking hours or initial rates to be paid on savings accounts? A. Savings accounts?

Q. Yeah. Well, let's take savings accounts, if you recall. A. I don't think it was necessary. I was competitive.

Q. Did you consult with C&S National as to your initial banking hours? A. No, I did not. I think that you'll find in the beginning, when Sandy Springs opened up, they were open on Saturday, closed Wednesday, had similar hours, and with the possible exception that they were not open **[18]** the additional hour each day, I felt that this was in keeping with a town that was on the move, that was still considered at this point a country bank.

Q. How did you go about determining your initial charges on checking accounts? A. Well, having been C&S oriented, I felt that the competition in Roswell that I was competing with and the competition downtown was very similar, the charges were very competitive, as I had been familiar with.

Q. Did you consult with C&S National before establishing a service charge on checking accounts? A. No, I didn't.

(Discussion off the record)

By Mr. Lehman

Q. Do you have the authority to change the interest rate paid on your savings accounts? A. Within the legal limitations, yes, I run the bank.

Q. As opposed to your board of directors? A. Well, certainly I would have their advice and direction on any recommendations that I might make.

Q. You also have the authority to change the interest rates charged on loans, or to set them, is that correct? A. Yes.

[19] Q. And also as to service charges on your checking accounts? A. Yes.

Q. And as to banking hours? A. Right.

Q. Again, this would be in the context of with the approval of your board of directors? A. It would be discussed, certainly, before I made any drastic changes.

Q. Have you made any changes as to your banking hours since the inception of the C&S North Fulton Bank? A. No, we have not. We've had the same hours since we opened June the 10th, 1967.

Q. Have you made any changes with regards to interest rates charged on loans? A. Yes, we have.

Q. Do you recall when your last change was made and what the change was? A. Well, our situation is such that it's been—

although we have generated funds, time deposits, demand deposits, we have a ratio of time deposits that's almost twice as large as demand deposits, so our cost of money is higher than the average bank. This would dictate to me—it would necessitate in order to make a profit **[20]** our charging a higher rate, possibly, but still trying to be competitive, so this is really the rate that we had charged, and we've never charged, of course, more than the legal limit, but I would say that it hasn't fluctuated a great deal, except on special accounts or loans, primarily real estate loans, real estate acquisition type loans, development loans, construction loans.

Q. Do you recall what the change was on these real estate loans? A. Yes. The state law changed, and I believe that they allowed you to charge an individual up to nine percent simple interest on a construction loan. If you were incorporated, you negotiated the rate with the corporate resolution agreeing to pay whatever rate was charged, plus a fee, if necessary, if required. We did go up at that point, and we have since tried to go back down, but we're still higher than I would imagine some of the other C&S banks, for instance. We are charging 8½ percent on construction loans, and we also charge a fee of 1½ percent. There are only two officers in the bank.

Q. Is this a higher interest than that charged by the Sandy Springs C&S on construction loans? A. I don't really know what Sandy Springs is charging on its construction loans. I haven't consulted **[21]** with them, with Mr. Fortuna.

Q. Is this a higher rate than what C&S National is charging on construction loans? A. I would think that it would be a half a point to one point higher.

Q. Prior to making this change, did you consult with anyone at C&S National? A. No. I don't think that was necessary as long as we're a profit oriented bank and we're doing our job. I did not consult with them, no. I have my board.

Q. So you would feel no need, then, to check with C&S National? A. No.

Q. Have you had an occasion to change the service charges on your checking accounts since the inception of the bank? A. Yes. We elected to do this in 1970, early 1970, I believe. If I recall, we had a major bank in town change their service charge. As it happened, my competition—whom I consider my competition in Roswell and Alpharetta were correspondents of this particular——

Q. By "town," you mean Atlanta? A. Atlanta, right. They were correspondents of this major bank, and as a result, I believe they might have changed theirs or lowered theirs, and so I lowered **[22]** mine, in a sense, that we reduced the minimum balance required on a checking account, and at the same time we made a nominal change in the regular checking accounts.

Q. Prior to making this change, did you confer with C&S National? A. No. I have other things that I do that I'm not sure what C&S National does. For instance, we have student accounts that are free accounts. Any college student has a free checking account. Any aged citizen, Social Security—that are eligible for Social Security or retirement has a free checking account.

Q. This is one of your own programs? A. Yes, it is.

Q. Are you aware if your compeitors in the Roswell area have the same type of free checking accounts? A. No. I have no idea. I believe our charges might be a little higher.

Q. Has C&S ever directed you to change interest rates on loans? A. They never have advised me of any changes, possibly in prime rates and whathaveyou, but I have never been directed——

Q. Are such advisements there for quote information only purposes? **[23]** A. That's correct. That's the way I consider them.

Q. Has C&S ever directed you to change your interest rate paid on savings? A. No, they have not.

Q. And has C&S ever directed you to change your service charges on your checking accounts? A. No, they have not.

Q. Does C&S National have the ability to dictate any policy or program of your bank? A. No, they do not. I would think they have the right to recommend, because we have an adviser on our board and would like to have his recommendations. That's why he's there. We listen to his recommendations, but we don't always go by them.

Q. Is that his primary purpose for sitting on your board, to make recommendations? A. Yes. And also they have been of great assistance to us in loan participations, and they like to be familiar with our loan portfolio, what type of loans are we making, and what will they be expected to participate in, if they are called on to do so.

Q. At whose request does he sit on your board? A. From the beginning it was my request. I don't believe we would have the C&S Bank in Roswell if we had **[24]** not been very closely allied with the C&S Bank. Other groups had started and had approached my originators to start another bank, because of the city's need, they were interested in starting another bank, but when they were approached by C&S, they were very interested, so it behooves me to stay as much in keeping with C&S as possible.

Q. Do you feel in your situation out there at C&S North Fulton that any of your actions as president of the bank would be controlled by C&S National? A. No.

Q. Do you presently attend—I believe it's a weekly credit meeting of C&S National people and correspondent associate people, maybe affiliates, too? A. This meeting happens to be on my day off, and I attend when I have something that I feel might be important enough to forego my day off.

Q. What day is that? A. That's Wednesday morning, and I did not attend this morning.

Q. Your attendance is not mandatory? A. If it is mandatory, I have not been so advised by my board or by my friends at C&S.

Q. Do you send someone in lieu of your presence? A. No.

[25] Q. Each week? A. No.

Q. Those times that you have been to these meetings, what is the purpose of these meetings? A. Well, I like very much to review my credits with other officers, five percenters, of the C&S National who are astute lending officers, people that have had possibly more experience than I have had in certain areas. If I have a credit that I feel needs reviewing, a sizeable credit, and I would like to have it reviewed and aired by the expertise of the officers downtown.

Q. By reviewing, I take it, say, for instance, this loan would have already been made? A. No, not necessarily.

Q. Are they sometimes prior to approval? A. Yes, sir.

Q. Are considered also? A. Right. Most of the loans that we discuss are after the fact, not necessarily a trouble situation, but different loans, $25,000, say, and over.

Q. How long have you been in attendance at these meetings? A. Regularly.

Q. Well, let me rephrase the question. Have you been in attendance at such a meeting since from the time [26] you became president at C&S North Fulton? A. In the beginning we did not have these type reviews, to my knowledge. Later we did decide that we would have a group-type meeting, and I elected to attend.

Q. Excuse me. Go ahead. A. I was not required to attend, though.

Q. The Goalpost Review Program, could you tell me a little bit about what that is? A. Well, I'd like to think that everybody sets goals for themselves. That's the way we achieve our end, is at the beginning of the year, or prior to the end of the previous year, we set goals and projections and I'd like to think all companies do the same thing, and we have the Goalpost, which is simply nothing more than to see how you have—what you have actually achieved as opposed to what you projected you would do, and we review this with our employees and with our board of directors, and if they would like to know what we're doing downtown, it's a matter of record.

Q. Are these goals—I'll rephrase it. As to this Goalpost Review Program, are these goals also discussed at these weekly meetings? A. I haven't discussed my goalpost in weekly meetings. To my knowledge, I haven't, and I haven't heard anyone else either. I would think this would **[27]** probably be a more individualized type thing. I mean, we all want to know what the other is doing, but it is not necessary that I sit down and review someone's—someone else's goalpost. It wouldn't be as meaningful to me as it might be if I did it individually, based on what I had projected.

Q. As to the times at these weekly credit meetings when you have been in attendance and also discussed a loan that had not been approved, what would you discuss about this loan? A. Well, you say it had not been approved. I would normally approve the loan myself.

Q. Right. A. I have the right to do that.

Q. Right. It was my understanding, though, that you said there were certain—— A. I don't want to get involved in a situation without first exploring all the possibilities with as many people as I can, and we have a credit department, that would be invaluable as far as feeding into a computer, and these type of things are reviewed with the group, and if you determine the man is credit worthy, first of all, and that the figures justify

his source of repayment, then you can make the loan and sleep nights.

Q. So, basically, you were looking just at the **[28]** creditworthiness of the individual and you wanted the advice of the people there that had had more experience. A. Yes.

Q. Do any criteria—Are any of these things established at meetings, criteria policies? For example, does a criteria come forth as to what steps you will follow in making the loan, like you look to the man, you look to his credit rating, background, and you look to X, Y, and Z, before you make the loan, anything like that? A. These are things that you learn as you come up through the banking business, and I would think at this point in time if you don't know yourself what the criteria is for making the loan, you have no business making them. I don't think we look to the committee for the very basics, rather for possible problem situations that they have been exposed to and I have not. There may be a particular type of loan, it may be financing an airplane, it may be financing a yacht, or something that requires a special documentation. It could be a type of construction loan with a permanent takeout, permanent takeout meaning does it correspond with the same commitment that you are planning to make for eighteen months or six months, or does it expire tomorrow, these sort of things are things that you might **[29]** not have thought about, but you should before you committed the loan.

Q. Do you receive correspondence from C&S National in the form of sales memoranda? A. By the pound.

Q. Mr. Lane, you mentioned that you started going to these credit meetings sometime after the bank's beginning, but not—it wasn't from the very beginning of the bank, is that correct? A. That's correct.

Q. Do you recall or do you know whether or not these meetings were in existence prior to your bank's beginning? A. Well, the C&S National Bank has a large supervision-type department

with the key people in the C&S Bank that are very familiar with the lending situation, and I think they become more spohisticated each year. In 1967 it was not geared up to handle this type of committee review; '69, possibly; '70 it became more and more sophisticated, so that we could do this type of thing.

Q. By "we," do you mean your bank, or do you mean C&S National? A. I mean C&S National and my bank if I elected to be there.

[30] Q. So, then, is it my understanding you do not know whether these meetings were in existence? A. Fortunately, or unfortunately, as the case may be, my tenure with the bank since 1960 has been shortlived with the National Bank. I have been in the Credit Department with the National Bank, and I went to orientation and had a brief training program with the National Bank. Since that time I moved to an affiliate, and worked in a unit bank, and then went to Sandy Springs, which is a correspondent associate. The correspondent associate is itself a unit bank, a separate entity, and that more or less explains why——

Q. I already asked if you if you do receive correspondence from C&S National, and I will show you now what has been marked President's Deposition, Exhibits 1 through 6, I believe, and will ask you if you will please take a look at these exhibits.

(Discussion off the record.)

By Mr. Lehman

Q. Now, do you recall receiving these documents? A. Yes.

Q. You keep this copy. We will refer to ours. Let's go to the President's Deposition, Exhibit 2, that would be letter dated July 20th, 1971. For what purpose would you receive a document such as this? For **[31]** what purpose would you have received this document? A. For information only, and I be-

lieve you will find on the other exhibits it has information on it, in fact, the last two or three——

Q. That would probably be my next question. I was wondering—I noticed in the document dated July 28, it has a heading "To Branch Managers, Presidents and Affiliates and Presidents, Correspondents, Associates," and I was wondering why in Exhibit 2 they would have that on the heading, and on Exhibit 6, at the very last line, for information only, at the bottom, correspondents and presidents. A. Any of these memorandums are guidelines that you may or may not elect to use. It is for information only. That's the way I interpret it.

Q. Do you recall at any time when you followed these guidelines that they set forth in the memorandum? A. By the numbers Exhibit 1, has to do with prime rates, or the best rate—we have very few instances where the prime rate becomes involved in our loans. We have a few national concerns in our neighborhood, that would be the only one I could think of that —might be Georgia Power Company, or somebody like that, Southern Bell. The only one that I am doing any business with would be Georgia Power Company.

[32] Q. In the exhibit marked Number 5 regarding drivein banking hours, I count—Well, first of all, do you have drivein windows at your bank? A. Yes. We have two. One originally, and we've added one since.

Q. Do you recall whether or not your windows—drivein windows, when they were opened? A. Let's see. I believe—my drivein windows were open the same hours that we discussed earlier, from 9:00 until 5:00, Mondays, Tuesdays, Thursdays, 9:00 until 6:00 on Friday, 9:00 until noon on Saturday.

Q. So, actually—— A. This was to give them a little more flexibility.

Q. Are you aware of any coordination as to banking hours among the C&S named banks whereby, say, for instance, a bank would not have to stay open both late on Friday night and on

Saturday mornings? In other words, another bank would stay open on Saturday, in order for the other bank to remain open on Friday night? A. No. We don't have any branches as such, and so I'm not familiar with any coordination between banks to service another bank's accounts or what have you.

Q. What types of personal loans does your bank offer? **[33]** A. We're very flexible. We have just about any type of personal loan you would need.

Q. How about—Do you have various types of commercial loans that you would offer? A. We do have this.

Q. Would you list some of them, please. A. Well, we have in our area, because of the very nature of it being a bedroom community, the largest and the most demand we have is for acquisition, development and construction type loans to builders. We have also had requests from time to time for working capital loans or term credit loans, equipment type loans.

Q. For these loans that you have mentioned do you know if a commercial loan is the primary, say, source for these types of loans as opposed to, say, savings and loans and many other type of financial institutions? A. Well, in connection, of course, with the construction loans, a commercial bank would not be the only source. We have a savings and loan who is a major source of competition.

Q. How about as to working capital? A. I think—I would think commercial banks would be the most feasible place. It's not the only place.

[34] Q. Did you also mention plant modernization loans? Would those be the same as construction loans? A. This could be property improvement type or plant improvement type loans in the case of a term credit.

Q. Would a commercial bank be more likely to be the institution making this type of loan? A. It would. I think that they are very competitive in this field.

Q. To what extent does your bank utilize the services of a correspondent in providing the service of checking accounts to customers? A. Would you repeat your question? I'm not sure I follow you.

Q. Perhaps I will rephrase it. Does your bank utilize the services of a correspondent in providing a checking account service for your customers? A. Only in the sense that in the beginning when we originally opened our bank, we had our own bookkeeping service. Of course, we have since become more sophisticated and needed the space that was available for something else, so that we have gone to the computer accounting system, and to that extent——

Q. Do you utilize a correspondent service for providing savings accounts to savings customers? **[35]** A. For providing savings accounts, no; for accounting purposes, we do, relating to savings programs.

Q. How about—Do you also utilize a correspondent service in the bookkeeping of your loans made to your customers? A. Yes, we do.

Q. Has this always been the case since the inception of your bank? A. Yes. Not to the extent that it is now. Again, it was more of a manual posting procedure in the beginning, and it still is on certain types of loans in our bank.

Q. At the beginning in your bank you did utilize the correspondent service? A. Yes, we did; on installment loans only. On the short term, 30, 60, 90 days term loans we still post in our bank and do not use a correspondent service.

Q. Earlier in this questioning we were discussing savings accounts. Have you always utilized a correspondent service with regard to your savings accounts in the bookkeeping? A. Well, there are still certain types of savings certificates or CD's that we do not utilize a correspondent for, such as a large CD of $100,000, we do our own computation and whathaveyou in

accounting. On [36] all other types of bonds, CD's, savings accounts, we do utilize the services of the correspondent.

Q. To compute interest and to render statements, you cannot do it as cheaply yourself inhouse as you can to buy the service from the C&S correspondent service associate—C&S Bank source—excuse me. So it's actually an economic factor rather than not being able to do it inhouse? A. Yes, it is.

Q. Does your bank offer any services to your customers which it can only provide by the use of a correspondent service? A. Yes. We have—we do not have a Trust Department. We encourage wills, profit sharing, appropriate profit sharing, estate planning, we would recommend that they use this service. We have, of course, charge account service. We are charge accounts merchants, and we use that service, of course. We've mentioned that the accounting system, the computer accounting system, International Department—we don't have an International Department, but we can issue a traveler's letter of credit, or commercial letter of credit through the Trust Department.

Q. Do you pay for these correspondent services that you've mentioned? [37] A. Yes, we do.

Q. Are there any received free? A. Yes. The trust interviews and things of that nature. A representative will come out and will talk to your customer, and whether he goes along with the service or whether he doesn't, it doesn't cost me anything.

Q. Are there any others that you think of? A. Most of the others that I have mentioned there is a charge. I could think of a dozen.

Q. To your knowledge of the services that you have mentioned, can these services or are these services offered by any of the other large banks in Atlanta? A. Some of them are not, I'm sure, and if they were, I would elect not to use it. I like to offer the best I can to my public, to my community, and I feel that that, C&S, would be the place I would direct them.

Q. Would you consider your correspondent relationship with C&S National mutually beneficial to both banks? A. Yes.

Q. Do you maintain funds, do you keep funds with C&S National, an account? [38] A. I believe that we had established that earlier that yes, we do.

Q. All right. I covered that. I apologize. What is the purpose of keeping these deposits with C&S National? A. We have to have one somewhere, and I would prefer that it be handled by C&S, because they are efficient, and no problems.

Q. Do you utilize this account to pay for your correspondent services provided by C&S National? A. No.

Q. How are these paid for? A. They are fees, service charges, what have you, for various services.

Q. But I mean you do not draw a check on this account or on this balance that's maintained with the C&S National to pay for the correspondent services pro—— A. To pay for the correspondent services provided to my bank?

Q. Right. A. We have, yes.

Q. Have you participated with the C&S National on loans that would be above your legal lending limit? A. Yes, we have.

Q. Do you recall how many times you have done so [39] in the last year? A. Approximately from the very day we opened we had more loan demand than we had funds to lend, and as a result we had participated loans, and we have been as high as a million-five, and it's been a continuing situation. Otherwise, I would spend all my time out looking for the money instead of making loans.

Q. Have you also had an occasion to purchase participations received? A. No, I have not. I don't believe I have ever purchased any participations from C&S Bank within the five-year period—there could have been a short account deal of some sort, but as a rule, I have not.

Q. From your knowledge of—in these participations would you receive or perhaps retain a higher rate of interest rate on the sale of a participation than from a non-C&S named bank? A. Run that by me again. I'm sorry.

Q. In these instances where you participated with a C&S National, do you know if your bank would receive a better rate as far as—I believe it's interest retained than would a non-C&S named bank, say another correspondent bank of C&S National? A. Yes. You're asking if the correspondent associate——

[40] Q. Yes. A. ——receives preferential rates on participations as opposed to a regular correspondent?

Q. Yes. A. I don't know.

Q. Are you aware of any other financial institutions in the Atlanta area other than a commercial bank that can offer demand deposits? A. No.

Q. Are you aware of any other financial institutions in Atlanta other than a commercial bank that can offer the variety of loans that a commercial bank does? A. No.

Q. Are you aware of any financial institutions in Atlanta other than a commercial bank that can offer the full range of services that a commercial bank can? A. No.

Q. Do you feel this ability of your bank to offer a full range of services has been of any assistance to you in attracting customers? A. Very definitely.

Q. Do you feel that this ability to offer a full range of services has given you a competitive edge over other financial institutions, meaning other than commercial banking institutions? **[41]** A. Yes, it has.

Q. Do you encourage your customers to utilize more than one service within your bank? A. Yes, we do. We would like for them to be—have a total relationship with our bank.

Q. Do you find that this normally would occur, that they would use multiple services in your banks? A. Very often.

Q. I think we discussed your competitors earlier, but who would you consider—which banks do you consider to be your principal competitors in your area? A. The Roswell Bank and the—what was formerly called the Citizens Bank of Alpharetta, which is now the Fulton Exchange Bank, and in connection with the real estate, we have the Fulton Federal Savings and Loan.

Q. These are non-commercial banks? A. That's right. This is a savings and loan, all of which at one time were owned by the same person.

Q. Is that located in Roswell—— A. Yes, it is. Fulton Federal Savings and Loan, the former owner retains a position on the big board of that institution.

Q. How close are these competitors that you have named to your bank? **[42]** A. In mileage? Well, the savings and loan association is 300 feet, one branch of the Roswell Bank is 600 feet. The others are half a mile. The Fulton Exchange Bank in Alpharetta is 6.8 miles. The branch of the Fulton Exchange Bank in Roswell is 1 mile.

Q. Do you consider a bank to be in competition to be in C&S National and its branches, affiliate banks? A. No.

Q. Why not? A. Well, I would think that we work together, but there's nothing that says I can't solicit a customer and in many instances you will find that their company or their livelihood is downtown, and they may bank with a bank, C&S bank next door to their place of business or whathaveyou, although they live in Roswell, and it would not behoove me to waste my time trying to solicit this account away from the C&S Bank, because basically we offer the same service. I don't feel I have a competitive edge over any other C&S Bank. I do my competition in Roswell, or what I consider my competition.

Q. What is the closest correspondent associate to your bank? A. The Citizens and Southern Bank of Sandy Springs.

Q. Do you consider them to be in competition with [43] yourself? A. No.

Q. Do you have any customers in the Sandy Springs area? A. Yes. I've lived in Sandy Springs for fourteen years, and I have a lot of friends from the Sandy Springs area that bank with me, not because my services are that much better than the C&S Bank of Springs. As a matter of fact, their resources are much greater than mine, and the cost of money might be less because of this. Their ability to generate deposits has been much better than mine, but a lot of people elect to bank with a friend.

Q. Even though you're both drawing customers from the same area, you don't consider yourself in competition? A. No.

Q. Do you consider a bank to be in competition to any extent with the downtown offices—with the downtown banks? A. I'd like to think I was, yes. Every opportunity I get to solicit another account, I certainly don't pass it up.

Q. Even though—— A. If they live in Roswell, I would do my utmost, [44] for the general area of North Fulton, I would do my utmost to solicit the account.

Q. In my reference to downtown banks, I am including C&S National, would this apply to C&S National? A. No, not necessarily. I think I explained that earlier.

Q. I just wanted to make the deposition clear. Do you know if there are any arrangements in the Atlanta area between C&S National and its affiliate banks and the correspondent associate banks not to solicit customers of another C&S named bank? A. No.

Q. Would you feel free to do so if you felt you had a potential customer? A. I have in the past, yes.

Q. Is there any geographic area in which you confine your solicitations for business? A. No, there's not. However, the community that we serve has such a demand that it would not behoove me to go out of this general area to solicit business, because I couldn't handle it.

Q. I think perhaps we've covered indirectly this area, but I'll ask you this question. Is it my understanding you would have a reluctance to service a known customer of the C&S Bank? **[45]** A. Can you qualify the question a little more, maybe?

Q. Take for instance—— A. What service specifically are you talking about?

Q. Say, for instance, if he comes into your bank and wishes to, say, open an account or make a loan, however, he's already an established customer of another C&S Bank, would you have a reluctance to deal with such an individual? A. In the very beginning I may have some reluctance, but after I had had sufficient opportunity to check the situation out, it really would depend if you had a large private customer at one of the national banks, branches of the National Bank main office, it could be that I couldn't handle the situation, so I wouldn't actively solicit his account, knowing in the beginning that I couldn't service it as he expects it to be serviced. I would be reluctant in that instance.

Q. But if you could handle it? A. And he has come to me?

Q. Yes. A. I would have little reservations about it, about taking care of his need, if I could.

Q. Do you have any out-of-state loan accounts? **[46]** A. To my knowledge, I have never made a loan out of state originally. However, I have made loans to people who has been transferred, and they ask my permission to keep the loan in effect or the account open, and it was perfectly all right with me.

Q. How about as to commercial loans, rather than personal loans? A. Offhand, I don't know of any commercial loans out of state.

Q. Do you have any out-of-state checking account customers? A. Yes.

Q. Both personal and commercial? A. With personal, I'm sure we do. Commercial, again, I don't believe so. I assume you're referring, when you say out-of-state customer, are you referring to national accounts where the home office might be in Chicago, and they have a local operation in Roswell?

Q. Yes. A. In that instance we might have an out-of-state account, but the local office is the——

Q. Right. A. ——operation with which we bank.

Q. How about—do you have any out-of-state savings customers? **[47]** A. Yes.

Q. Both commercial and personal—primarily personal? A. I don't have any commercial savings, CD's, from out of state; personal, yes. I think again you'll find that that was a situation where they lived in the community and your maturity dates on bonds are such that it did not behoove them to cash the bond in and move it with them, so they kept the account open.

Q. You mentioned earlier that you had within your board of directors a loan committee. What is the function of this committee? A. I don't recall mentioning that, but we do have——

Q. I think you mentioned—you were talking about the credit meetings and everything—— A. We do have within our board five men and myself that correspond with the finance committee, and we review all loans prior to each directors meeting. Thirty minutes prior to each directors meeting, this group gets together and discusses all loans which have gone on that did not exceed $25,000 and all loans that are being committed that might exceed that amount that would involve a future commitment are reviewed.

Q. I may be a bit confused. Are we talking about **[48]** reviewing an already made loan or—— A. We're talking about

prior approval. Anything under the legal limit, of course, is to be reviewed.

Q. I see. A. I have the prerogative within the legal limits of the bank without the permission of the finance committee or anyone else.

Q. Other than the possibility of these loans being discussed at the credit meetings and—— A. When you refer to credit meetings, what are you referring to?

Q. Wednesday morning credit meetings, the weekly credit meetings. A. Okay.

Q. Okay. Other than these instances or perhaps where C&S National might be participating in a loan with your bank, does C&S National review any loans of yours? A. Do they review any loans of mine? Well, of course, we have—we employ the local auditing department of the C&S Bank, which is another correspondent service, to review the entire bank's operation, and they review it, of course, the loans.

Q. Including an audit function? A. Would you rephrase your question?

[49] Q. All right. Are there other than those instances whereby you might discuss a loan at a weekly credit meeting or those instances whereby you might be participating in a loan with C&S National? Does C&S National review any of your bank's loans, and this would be excluding the audit function? A. Yes. There are occasions when I have a loan that might be—I might feel is in jeopardy or maybe approaching some problem situation, and I would ask them to review with me the complete file on the loan and all of the information that I have available to determine the best course of action.

Q. All right. A. If they are not participating in the loan, I would see no need for them to question this information.

Q. Along this line, has your bank ever received, or you ever received suggestions or advice from C&S National as to not

making a loan, a specific loan? A. From time to time we may have a memorandum that would come out that would relate to some experience that they had had with a customer which—so that you don't—you avoid the situation and don't get involved with a similar possible loss. Other than that, I can't think of any.

[50] Q. Would you consider a memorandum such as this again, for information only, or would this have the consideration of, say, a directive? A. No. That's information only.

Q. What is the closest C&S National office to your bank? A. A branch? Roswell Wieuca branch.

Q. Are you aware of what interest rate it is charging on its loans? A. I have not had occasion to ask.

Q. Are you aware of what interest rates it pays on its savings accounts? A. I am sure they are competitive and similar to other banks in the area and possibly my bank.

Q. Are you aware of what they are charging on the checking accounts as to service charges? A. Well, yes, I am aware of the exact service charge of the C&S National Bank, by having worked with the C&S National Bank and being apprized of any changes through memorandum type form or for information only.

Q. Would it be any concern to your bank if any of these charges were different than your bank? A. No. I would always do my best to compete in the community in which I serve, and what they do downtown is not my business.

[51] Q. Do you consider that the interest rate charged on a loan is probably the thing that attracts the customer as far as—— A. No. The availability of money, the interest rate, the conditions.

Q. How about the type of service available? A. The related services that a bank can offer.

Q. Would the same be true for interest rates paid on savings account, that it would not be the sole tool to attract a customer? A. I wouldn't think so. I'd like to think that we are a full service bank, that we purport to be, and we can handle your savings, your checking, your loan, your safety deposit box, all of the services that are available through one bank, without having to go from one to the other to provide the service.

Q. At the beginning of our conversation, you mentioned that your bank adopted the pension plan of C&S National and also the profit sharing plan. Who funds these programs? A. We fund the programs.

Q. Who administers these programs? A. The National Bank.

Q. Does C&S National contribute anything to either of these programs? [52] A. They do not.

Q. Do you have other types of benefit programs for your employees? A. Yes.

Q. Such as accident insurance? A. Yes. We have health insurance, including dental, we have—for the officers, for instance, working with me, we have term insurance. We have term insurance—we have cash incentive bonuses.

Q. Could you explain what this cash incentive bonus is? A. That's exactly what it purports to be, a cash incentive bonus for doing a job.

Q. Is this for both employees and officers? A. Yes, it is.

Q. From where does the cash come from? A. From our profits.

Q. Are these insurance programs that you were mentioning, are they funded by your bank? A. Yes, they are.

Q. Are they administered by C&S National? A. Yes, they are.

Q. Is this cash incentive program, is this administered by C&S National, or is this strictly—— A. It's funded by our bank

and administered by [53] their bank, with the recommendation of our board.

Q. Has any part of the remuneration received by you for your performances at C&S National—excuse me—at C&S North Fulton been paid by C&S National? A. There was a short time when the bank was first organized that I was carried on the National Bank payroll primarily to keep from cutting off the fringe benefits that were coming out of—the profit sharing program—I was making a contribution to that program out of my income, and this was the reason I continued to do that.

Q. Do you know if C&S North Fulton reimbursed C&S National for that salary paid to you during that time? A. We did not, because this was prior to the actual opening of the bank, and I was performing a dual function, I was employed by the C&S Bank of Sandy Springs still while I was organizing and putting together the charter and prior to opening the bank.

Mr. Lehman: We have been going for about an hour. Why don't we take about a five-minute break, and then you can have your turn.

(Short recess)

[54] By Mr. Lehman

Q. One question. You mentioned—you were talking about your cash incentive program, and you mentioned that your directors recommended, I believe was your terminology, to, I believe it was C&S, as to what the share would be received by the employee? A. Well, the guideline comes from me, and they approve it at a directors' meeting as a routine matter.

Q. So as far as recommending—it has already been decided that the amount will be, and C&S National does not play a part in that? A. No. We have a percentage based on the length of time that they have been there, and the job that they have done, and we use this basically. Officers' cash incentive is different. It's left to my discretion as to what type of job I feel

that he has done. If he's excelled, it's 150 percent of his cash incentive, he may not get but 100 or 50, based on the job that we feel he did.

Q. I think that I just may be involved in a question of semantics as to your saying that the directors recommend—in other words—— A. No. I recommend; the directors approve.

Q. Fine. Thank you. I turn you over to Walter Grant.

[55] **Cross-Examination**

By Mr. Grant

Q. I have just two or three questions. Mr. Lane, first when you became president of the C&S Bank of North Fulton, did you think that you were leaving the C&S system or the C&S family at that time? A. No. I would not have taken the move if I had thought I was leaving the C&S system, although I thought it was an excellent opportunity in a growing area. As far as I'm concerned, it was exactly what I had been doing, except I was heading up the operation instead of——

Q. Do you consider at this time you are running a C&S bank and that your bank is part of the C&S system? A. Yes, and my customers feel the same way.

Q. A little earlier you described the C&S style of banking; as you consider that phrase, do you think that you are bringing the C&S banking to North Fulton? A. If I'm not, I hope they replace me very soon. I would like to think we are, yes.

Q. Let me ask you another question. Of the recommendations that you receive from C&S National, or from your advisory directors, do you have any idea of the percentage of those recommendations that you have followed? **[56]** A. Well, we have had a lot of discussion at board meetings, but generally, I'd say that practically 80 or 90 percent of all of the recommendations that they have made have been adopted because a di-

rector is not a banker. They can listen to a suggestion, but if it's tried and true, they are more inclined to go along with it in nearly every instance, they have gone along with it.

Q. As a past president of a C&S correspondent associate bank, could you tell me what C&S National does for your bank? In other words, what services it—C&S National provides for your bank, that C&S National does not provide a normal correspondent, that is correspondent banks of C&S National that are not five percent correspondent associates? A. Well, of course, we have the advice of the advisory board members once a month, and then we have the facilities of the credit meetings, we have access to the facilities of the credit department as such. Basically, I would say, that's the difference in correspondent associate and correspondent.

Q. Would you say that most of the customers of your bank think that it is a part of the C&S system, maybe just a branch of C&S National? A. Yes. I think particularly our stockholders **[57]** feel that it's the same as C&S, and that all of our customers, a lot of which have been in the city and moved out to Suburbia, feel that they are banking with the same bank, that it's so similar in service and attitude, that it's one and the same.

Mr. Grant: That's all I have.

Mr. Lehman: I have a couple.

Redirect Examination

By Mr. Lehman

Q. In answer to Walter's question, I think maybe the first or second question, you stated you felt you were running the C&S Bank? A. Yes.

Q. Now, did you mean to say that you felt you were running a C&S bank or that you were running it in a C&S fashion or manner? A. Would you explain the difference?

Q. As a matter of fact, is this C&S National Bank or branch? A. Obviously it is not a C&S National Bank, but it's very similar to the National or a branch, as far as the attitude of the employees toward the customer and the service it offers—not necessarily the prices of the services, because they differ, but I would like to think that the attitude is the same that I have been [58] accustomed to being in the C&S for all these years.

Q. And in discussing the position of the advisory director, you stated that you followed his suggestions on the percentage a large share of the time, a great share of the time. Was this because of his suggestions were in the best interest of C&S National or the best interest of your own bank? A. The best interest of C&S Bank of North Fulton.

Q. And my third question was how were you aware of what people think your bank is with regard to thinkinig it possibly a branch of C&S National? A. Well, we have had occasions to question our people, to poll them, or to survey the customers of our bank, and there's a very little recognizable difference, as far as they were concerned. They still feel that they are banking with the same bank.

Q. Do you question them as to the differences between the two banks? A. We have had market surveys, and that would give us their attitude toward the type of service we are offering, and in each instance we try to improve on the service based on the recommendations of the customers.

Q. And my last question was, how were you aware of what correspondents, what services correspondents of [59] C&S National received as opposed to those services received by a correspondent associate? A. Well, I had never seen a correspondent per se at a credit meeting. I've never, to my knowledge, they don't use the facilities of the credit department if it's available, whether they ask for advice from and receive same from the executive officers of the C&S Bank, I don't know.

Mr. Lehman: No further questions.

(Whereupon, the deposition was concluded.)

HUGH F. LANE, Deponent

Sworn to and subscribed before me, this the .... day of ....., 1972.

Notary Public

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August 22, 1972

The following items are corrections to answers in the original deposition prepared by the Court Reporter:

Page 5, Line 6 "5555 Wright Road" should be "6555 Wright Road, NE Atlanta, Georgia"

Page 6, Line 9 "Andrew Irving" should be "Andrew Irvin"

Page 6, Line 22 "it's a bedroom life community" should be "it's a bedroom community"

Page 6, Line 23 "bedroom industry" should be "little industry"

Page 8, Line 2 "Dr. Andrew Irving" should be "Dr. Andrew Irvin"

Page 8, Line 4 "Dr. Andrew Irving" should be "Dr. Andrew Irvin"

Page 9, Line 1 "Ted Mackey" should be "Ted Murphy"

Page 9, Line 11 "screening period" should be "training period"

Page 10, Line 6 "had an account" should be "have an account"

Page 11, Line 19 "most qualified" should be "best qualified"

Page 14, Line 20 "would you like them in——" should be "would you like them in order"

Page 15, Line 3 "they were charging" should be "they were paying"

Page 17, Line 7 "we start with" should be "we competed with"

Page 17, Line 9 "so they" should be "so we"

Page 22, Line 3 "the regular checking" should be "the special checking"

Page 22, Line 21 "they never have" should be "they have"

Page 24, Line 4 "were interested" should be "were not interested"

Page 26, Line 23 "I have discussed" should be "I haven't discussed"

Page 36, Line 14 "appropriate" should be "corporate"

Page 36, Line 22 "Trust" should be "International"

Page 47, Line 18 "that correspond with" should be "that compose"

Page 50, Line 7 "Roswell" should be "Roswell Wieuca Branch"

Page 50, Line 25 "is" should be "is not"

HUGH F. LANE ELIZABETH WOOLF

[1] GX 211

(Title Omitted in Printing)

The deposition of **Alva G. Maxwell,** Deponent, taken at the instance of the Plaintiff, reading and signing of the deposition not waived, before Roberta Newberry, Deposition Officer, com-

mencing at 1:30 p.m., July 19, 1972, Citizens and Southern National Bank Building, Atlanta, Fulton County, Georgia.

* * * * * * * *

[4] (Whereupon, in discussion off the record, the reading and signing of the deposition were not waived.)

Whereupon,

ALVA G. MAXWELL

was called as a witness and, having first been duly sworn, was examined and deposed as follows:

Cross-Examination

By Mr. Kinkaid

Q. Would you please state your full name and residence address? A. My name is Alva, A-l-v-a, (spelling), G., like Georgia, Maxwell. And I'm RFD number two, Marietta, Georgia, on Postoak Road.

Q. Do you have a present occupation, Mr. Maxwell? A. I'm retired. I fish and play a little golf. So that's me. I still come down to the office a little bit. And I help run Young Harris College.

Q. From what position are you retired? A. I was vice-president of Citizens and Southern National Bank.

Q. When did you retire? A. 1956, October 1st.

Q. How long have you been a director of the Sandy Springs Bank? [5] A. I was a director about two months after they opened. And I stayed until—what year? I became an honorary director in about four years ago, I guess.

Q. That's good enough. A. I was there about ten years.

Q. You were then not one of the organizers of the Sandy Springs bank? A. No, not the new bank, no. I was one of the

organizers of the original C&S bank. And then I went to Europe for three months. When I came back, the new bank had been organized. And they saved a place on the board for me. That's all I had to do with it. And I had some stock.

Q. Let's see if I had that right. We understand that there was an attempt made by a group of people to obtain a state charter for a bank in Sandy Springs in the late fifties. A. That's correct.

Q. Were you part of that group? A. Yes, sir.

Q. Who were the other members of that group, if you can remember? A. Jim Aldrich, Dr. Cason—What's the grocery man's name, Fortuna?

Mr. Doyle: Mr. Maxwell, if you can remember, **[6]** fine. If you can't, he'll get a chance to ask Lou all he wants.

The Deponent: Lockerman. Mr. Lockerman was one of the directors. That's Doris' husband. Everybody knows her. And I think that was about it. There were about seven directors, but I've forgotten who they were.

By Mr. Kinkaid

Q. This group was not successful? A. Well, we were successful in getting the stock subscribed and getting ready to go. But the State Banking Department declined the charter. They claimed they didn't decline it, but deferred it. But, actually, it meant the same thing.

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[1] GX215

(Title Omitted in Printing)

The deposition of **Dalton F. Scott,** Deponent, taken at the instance of the Plaintiff commencing at 2:30 p.m., July 20, 1972, at the Citizens and Southern National Bank Building, Atlanta, Fulton County, Georgia.

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[34] Q. You stated that Mr. Ingram was the advisory director for your bank at the present time? **[35]** A. (Nods head affirmatively.)

Q. Have you had any advisory directors earlier than this or before him? A. Bill Mathis was the first advisory director.

Q. When did he become an advisory director? A. When the bank was formed.

Q. So ever since the bank has been formed you've had an advisory director? A. Right.

Q. And has the advisory director always been a nonvoting member of the board? A. Right.

Q. Do the advisory directors attend all meetings—— A. Yes.

Q. ——of the bank's board of directors? A. A lot of times committee meetings.

Q. Do you know if the advisory director attends the loan committee meetings? A. No. I really don't because I don't attend those meetings myself.

Q. Okay. In what capacity does the advisory director attend board meetings? What are the functions of an advisory director? A. Just as you've stated there. He is to advise us on anything that might come up pertaining to the bank **[36]** that would be of interest to the bank for the betterment of the bank and helps us in every way that he possibly can.

[5] **ECONOMIC REPORT**

ECONOMIC REPORT VOL. I

B. Historical Background of the Citizens and Southern Correspondent Associates*

The Citizens and Southern correspondent associate banks—those banks in which the Citizens and Southern Holding Company owns five percent of the equity, and thus often referred to as "five-percent banks"—must be viewed as a product both of changes in banking legislation in the State of Georgia and of developing banking needs in the suburban areas outside of the State's major cities, primarily outside of Atlanta. They are a result of responses by Citizens and Southern to new and developing banking requirements as permitted by Georgia law.

(1) Georgia Banking Legislation, 1927-1970

Prior to 1927, branching by Georgia banks was geographically unrestricted, during which time the Savannah-based Citizens and Southern Bank branched into Atlanta and other Georgia cities. However, in that year the Legislature imposed a complete prohibition on the establishment of any new branches. Some liberalization of this prohibition was enacted in 1929, permitting branching in some municipalities by banks having home offices within those municipalities. The 1929 law remained in effect until 1960, and effectively prevented The Citizens and Southern National Bank, whose home office remained in Savannah, from establishing new branch offices [6] in (or around) Atlanta. The 1960 legislation permitted branching by Citizens and Southern within the city limits of Atlanta, which by that time included a small portion of DeKalb County as well

* This section relies in large part on material drawn from the merger applications submitted to the FDIC by C&S Emory Bank and C&S Bank of East Point, to which citation is made for further details.

as much of Fulton County. Meanwhile, the major competitors of C&S whose home offices were in Atlanta had been branching within the city since the enactment of the 1929 statutes. The 1960 legislation, then, effectively restored C&S to potential competitive parity within the city of Atlanta.

The Georgia branching restrictions over this period left the holding company as the only route open to C&S for geographic expansion in the Atlanta area; moreover, it was, until 1970, the only means open to any Atlanta banks for serving customers in that city's rapidly growing suburbs. This led, in turn, to the establishment of one C&S affiliate in suburban Atlanta, the C&S Emory Bank (in 1950), and to the acquisition of two others, the C&S Bank of East Point (in 1948) and the C&S DeKalb Bank (in 1954). In 1960, legislation was passed to the effect that bank holding companies could acquire no more than five percent of the voting stock of a bank. The C&S correspondent associates, then, are in part a product of the 1960 legislation.

The final legislative action relevant to the issues here is the liberalization of the Georgia branching statutes in 1970.* This permitted a [7] bank to establish branch offices within any county in which that bank already had an office. In effect, this permitted Atlanta banks to branch throughout Fulton and DeKalb Counties, and suburban banks to establish branches elsewhere in their counties. This legislation also gave rise to the possibility of mergers between banks in Atlanta and banks in suburban DeKalb and Fulton Counties. Thus, under Georgia law, C&S National could branch into those parts of Fulton and DeKalb Counties outside of Atlanta and the proposed mergers could be sought.

(2) The Development of the Atlanta Suburbs

The second significant factor underlying the development of the C&S correspondent associates pertains to the substantial

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* Effective January 1, 1971.

growth of the suburban areas around the major Georgia cities, particularly Atlanta, both in resident population and in commercial and industrial activity.* This, of course, resulted in a substantial increase in the number of suburban banking customers, many of whom were without the services of a convenient banking office during the early stages of this surburban development.

At least as significant for banking patterns as this growth itself has been the accompanying change in the character of these areas. Out- **[8]** lying areas that once had been largely independent of Atlanta increasingly became part of a single integrated metropolitan area, with an observed increase in the complexity of economic relationships among different communities. For individuals, this has been manifested in commuting and shopping patterns, whereas for businesses, it has resulted in changes in and expansion of the number of their locations.

As is typical of metropolitan area development, the suburban development around Atlanta resulted from a residential shift from Atlanta to nearby areas outside of the city and from explosive growth throughout the metropolitan region. With this residential shift came commercial development in the suburbs to serve this new population; freeway development has linked the metropolitan area and has, more recently, enabled other types of business enterprises to establish operations in the suburbs.

The emerging metropolitan area complex has, of course, created a need for banking facilities in the suburbs. This need, however, could not be met satisfactorily without the participation of the large financial institutions which are located in the center city. Suburban development has occurred with a continuing economic dependence upon and orientation toward the center city. Many customers who moved to the suburbs and

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* The fact of this rapid suburban growth is recognized by Plaintiff (Complaint, filed November 11, 1971, paragraph 36).

opened bank accounts there also retained downtown banking connections, both **[9]** because they valued their prior banking relationships and because they require the services of larger banking institutions. Many business facilities in the suburbs are operated by firms with main offices in downtown Atlanta, and thus require both suburban and downtown banking connections; for business, the services that larger banks can provide are especially important.

Suburban areas thus must be distinguished from free standing communities in terms of their banking requirements. Whereas local independent banks sometimes can perform very adequately in the latter environment, the characteristics typical of growing metropolitan suburbs make it more difficult for local independent banks to attract customers whose requirements include convenient access to many banking offices, regardless of whether competition exists with branches of downtown banks. For this reason, regulatory authorities are careful in granting charters for the establishment of independent banks in the suburbs. Thus, for example, bank charter applications for Sandy Springs and Chamblee were initially turned down by the Georgia banking authorities because, in their judgment, there was inadequate potential business in these communities. Consequently, many rapidly growing communities in the Atlanta suburbs did not have available to them convenient banking offices and services; moreover, where there were local banks, these banks were unable to fully meet the banking needs of many suburban banking customers because these needs were often tied to downtown Atlanta.

[10] The only means by which these developing banking needs could be met fully was through the assistance of the major Atlanta banks, both in establishing new suburban banks and in assisting them in their operations. The Citizens and Southern organization provided the most extensive response to these suburban requirements, and indeed, the pattern of this response closely parallels the development of these areas. The first C&S

banks in the Atlanta suburbs were The Citizens and Southern Bank of East Point, The Citizens and Southern Emory Bank (near Decatur), and The Citizens and Southern DeKalb Bank (in Avondale Estates), all affiliates of Citizens and Southern Holding Company in existence prior to the change in the Georgia bank holding company law in 1960. All are located in long established suburban communities.*

In about 1960, the time of the last change in the Georgia holding company statutes, the development of the suburban areas in DeKalb and Fulton Counties began to accelerate. C&S thus initiated a program of working in cooperation with local residents to establish new banks in areas that had been inadequately served. The Citizens and Southern Banks of Sandy Springs and Chamblee were organized in 1959 and 1960 as "correspondent associates" of C&S National. The Citizens and Southern Belvedere Bank was similarly organized in 1966, and The Citizens and Southern Bank **[11]** of North Fulton, located in a more outlying area that was slower to develop, was organized in 1967. In the same year, The Citizens and Southern Park National Bank was established to serve a business complex, and more recently, The Citizens and Southern South DeKalb Bank was organized to serve a rapidly growing Atlanta suburb. Meanwhile, The Citizens and Southern Bank of Tucker represents a situation that in some ways parallels those in East Point and Avondale Estates. An older bank (in this case chartered in 1919) in an established community was dormant because its owners were unable to provide management which could keep pace with the expanding banking needs of its community; this bank became a C&S correspondent associate in 1965.

(3) The Nature of the Correspondent Associate Relationship with the exception of the Tucker bank, all of the C&S cor-

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* A 1929 statute, repealed in 1932, temporarily annexed East Point, Decatur, and Avondale Estates, as well as two other communities, as "boroughs" of Atlanta. East Point already had a population of 21,080 by 1950 and Decatur a population of 21,635 by the same date. (Source: U.S. Bureau of the Census.)

respondent associates in the Atlanta area were offspring of the C&S organization from their inception. As will be discussed in more detail in Section VI, it was the understanding of their stockholders and directors from the outset that, while each would have its own directors responsible to its own stockholders, C&S would provide the management to establish and to operate these banks. This understanding was a major element in obtaining their charters and in attracting stockholders and directors; moreover, it was understood by the personnel of these banks from the beginning that they would remain part of the C&S organization. Finally, it was expected that the correspondent **[12]** associates would ultimately be integrated into the C&S organization in a corporate sense should Georgia's branching or holding company statutes subsequently be liberalized to so permit.

Through the vehicle of the correspondent associate, the C&S organization responded to actual and potential growth in suburban communities by providing assistance in making banking services available in those communities. The impetus for this response was the fact that banking services were otherwise inadequate in these communities. While it is not certain that independent charters could not have been obtained, in every instance the local groups organizing the correspondent associates required such assistance. Under these circumstances, it is at least clear that the regulatory authorities gave weight to the assurance of C&S management assistance in granting the original charters. The advantages of the C&S relationship clearly have affected the subsequent performance of these banks: their identification with C&S, the ability of customers to bank at many different offices, and the access of customers to the specialized services available only from large banking institutions, all have served to attract customers by better meeting their banking needs in an increasingly metropolitan environment.

Several additional points, to be elaborated upon more fully in Section VI, should be noted by way of background. First, the correspondent associate banks are located in essentially separate

suburban areas in [13] which banking services were otherwise inadequate at the time of their establishment or, in the case of the C&S Bank of Tucker, at the time of association with C&S. Indeed, their subsequent record of growth attests to the fact that they have fulfilled otherwise unmet banking needs. Second, their directors, most of whom were C&S customers who recognized the need for local banking facilities, generally felt a close relationship with C&S. Third, much of the stock of the correspondent associate banks typically was widely distributed within their local communities as well as among stockholders, officers and customers of C&S. This wide distribution of stock has served to attract and to hold customers, as well as to prevent the control of these banks from falling into hands unfriendly to C&S.

Finally, the C&S involvement with its correspondent associates has been operational in nature. The directors of the correspondent associates stress that they are independent of C&S, but have left banking management to C&S. The operational support provided to the correspondent associates has increased commensurately with the demands of technology, particularly in data processing, to centralize operations. The nature of this assistance must be understood within the context of C&S operating policy, which leaves to the manager of each facility decisions respecting rates and service charges, loans, banking hours, and so on. C&S provides the operating tools and subsequently evaluates overall performance.

[14] Summarizing, the C&S relationship of the correspondent associates, which is voluntary for each such bank, has resulted in the banking system better meeting the convenience and needs of customers in the suburbs of Atlanta and elsewhere. The system of correspondent associates, moreover, has been procompetitive in that it has provided suburban customers with more banking alternatives than could otherwise have been economically feasible. Finally, the correspondent associates, like the suburban affiliates, are in basically separate banking markets.

With this background, the remainder of this report discusses the detailed investigation of the issues raised by the plaintiff in this case. The next section provides an introductory description of the types of studies undertaken.

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[83] C. **Conclusion**

The analysis of this section has focused on determining the extent of market overlaps among the C&S affiliate and correspondent associate banks in DeKalb and Fulton Counties. While an analysis of accounts by Zip-code origin of address is somewhat imperfect, it nevertheless strongly suggests that suburban banking markets are quite local in nature. This is even more true of suburban independent banks than of suburban branches of major city banks. Unique to this case, then, is that there are a number of geographic markets in which the competitive aspects must be determined, and the broader geographic area that encompasses these markets is relevant only for weighing the convenience and needs factors.

[84] A more detailed analysis of account origins by address further suggests the quite local nature of these banking markets. Moreover, it indicates very clearly that there is no more than a very minimal amount of overlap among the markets of the C&S affiliates and correspondent associates—too little to be of any possible competitive significance. Moreover, since these banks operate much as branches of a single institution in providing services to customers, the nature of their markets should be similar to those of branches of the major banks. This implies, in turn, that their market areas would be even smaller and more local in character were it not for their C&S relationship.

Spillover effects, on the other hand, are observed to be significant, and this, too, is in large part a consequence of the C&S relationship. It is the task of the next section to investigate this topic further.

Meanwhile, the analysis to this point suggests that there exists no market in which any two or more C&S affiliates or correspondent associates could have meaningfully acted in restraint of trade. Since each serves its own separate market, there exists no area in which the proposed mergers could tend to reduce competition.

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[114] E. Conclusions on Suburban Banking Requirements and Customer Behavior

The results of the survey and interview investigations confirm the hypotheses about metropolitan area banking and customer behavior outlined **[115]** earlier in this report. Despite the apparent complexity of banking patterns in metropolitan areas such as Atlanta, convenience is the primary factor in the selection of banking relationships. Although this is not always defined by the customer in terms of proximity to home or place of business, it is clear that it implies that suburban banking markets are quite local in character. Nevertheless, suburban banking customers generally include access to many offices of the same organization as part of the convenience factor.*

It is clear, too, that the accounts that originate, or appear to originates outside of a C&S bank's own local market area do not in any meaningful sense represent competition or the potential for competition among the C&S banks. Spillovers of accounts are characteristic of metropolitan areas, particularly where customers have access to many offices of the same organization. They thus are largely a result of the complementary relationships among these banks and between them and the C&S National Bank. Such accounts would tend to be lost if the C&S correspondent associates were instead independent.

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* Again, Exhibits 28 and 29, showing transmittal items for deposit and check cashing on accounts at other C&S banks, attest to the widespread use of C&S offices other than those where these customers have their accounts.

This complementary relationship, and the C&S identity of these banks is also important to customers who require the services of a large [116] bank as well as convenient access to suburban facilities for their day-to-day banking needs. For many of these customers, the C&S correspondent associates are essentially surrogates for branches of the C&S National Bank, and tend to be viewed and utilized as such. Basically, it is the personal customers of these banks who are more likely to be unaware of the fact that they are not branches; however, it is to the business customers, who more often are aware of the difference, that the complementary relationship among the C&S banks is most likely to be critical.

The analysis, then, not only confirms the local nature of the market areas of the C&S affiliates and correspondent associates, but also suggests that their customer base is largely built upon the C&S relationship and identity. Local independent banks, most of whose customers can be served just as well by branches of the major banks, are unable to meet the needs of a growing number of metropolitan banking customers, and most suburban C&S customers appear to be among those whom these independent banks cannot fully serve. Since it is the complementary relationship and common identity of these C&S banks that has attracted and held the major part of their customer base, it is clear that they would tend to lose much of their market if independent of C&S.

The effects on the Potential competitiveness of these banks as independents should be clear, particularly when it is recognized that even [117] their locational advantages—the primary factor that now distinguishes them from one another—would be lost as the major Atlanta banks, including C&S, branch into their market areas. They would lose many customers because of their inability to serve them; indeed, each time customers are lost, their ability to serve remaining customers would be weakened, resulting in further losses of customers. As a consequence of attrition, they could no longer be significant competitive fac-

tors in their own market areas. Moreover, banks thus weakened could not consider opening new offices, nor is there a significant customer base to be served by their doing so. Consequently, there is no reasonable possibility of these banks entering one another's market areas and thereby becoming competitors.

[118] VI. Policies and Behavior of C&S

The preceding section focused on banking patterns from the point of view of the banking requirements and behavior of C&S suburban customers in the Atlanta area. This section will describe the manner in which C&S operates as an organization with particular reference to its correspondent associate banks.

Banking competition is more than the number of banks in a given market—it is their behavior. Since the very purpose of competition is to ensure good economic performance, an analysis of the impact of the C&S correspondent associates on competition in the Atlanta area should be as directly tied as possible to an appraisal of performance. Performance, of course, cannot be measured in a vacuum, for what counts is the extent to which the banking organizations are meeting the needs of customers. For this reason, considerable attention has been devoted to the issue of why a customer chooses a bank and to the issues that are important to banking customers in the Atlanta area. The present section, by means of an examination of the behavior of these banks, will attempt to determine whether the correspondent associates have been successful in meeting these customer needs.

[119] The information in this section draws heavily from the interviews which have been conducted with banking customers, C&S bankers, and competing bankers. Two basic issues are considered. First, the nature of the correspondent associates is discussed with particular attention to their image, their management by the C&S organization, and the competitive impact of their merger into C&S. Second, the prospects for the correspondent associates as independent banks are discussed, for that

is the alternative to the mergers presently under consideration. In both cases, particular attention will be placed on the competitive effects as well as on the ability of these banks to meet the convenience and needs of the communities they serve.

A. The Nature of Correspondent Associates

The correspondent associates are C&S banks. Customers and competitors view them as such because they are managed by C&S personnel and are identified as C&S banks. Their competitive behavior conforms to the so-called "C&S style of banking," and they provide customers with the full range of C&S banking services. Indeed, this C&S style of banking is at the heart of the competitive posture of all C&S banks. While no phrase such as this is subject to precise definition, several things are implied thereby. Customers, **[120]** both of C&S and of other banks in the Atlanta area, generally view C&S as the most competitive and innovative banking organization in Atlanta. C&S normally takes the lead with new services and is somewhat more retail-oriented than are other banks. To competitors, C&S represents a tough and aggressive adversary, termed by many as "the leader" and as the banking organization most necessary to reckon with. To a C&S banker, this "style" implies a delegation of authority to make decisions, an attitude to try to find a way to work out a customer's problem, a positive desire to lend money, and a desire to serve effectively the communities in which C&S banks are located. In contrast to the policies of most major banks around the country, where loan officers must justify their loans in advance, a strong burden is put on C&S officers to justify why certain loans have been turned down. Only one C&S officer is needed to approve a loan, whereas the concurring opinion of two is required to turn down a borrower's request. In short, C&S bankers have the authority and the back-up to be responsive to the needs of the local communities which they serve.

The senior management of C&S has the responsibility for establishing guidelines, assuring that adequate operational support is provided as required, and for appraising the performance of the organization. With respect to the most general types of guidelines, **[121]** recurring references were made to the ability of the organization to serve the community, the customer, and itself—in that order. The emphasis on independent on-site decision making by C&S branches, affiliates, and correspondent associates is related to the fact that customers react negatively to delays caused by loan committees and other head office reviews. Meanwhile, the C&S organization provides all of its banks and branches with management tools and personnel, with credit reviews, and with operations support. Management control is provided by *ex post* performance and credit reviews rather than by *ex ante* directives. In the extreme, poor performance results in management replacement; otherwise, the management of individual banking offices is expected to make its own decisions on lending and on interest rates.

The consequence of the independent decision making by branch managers and by the presidents of the C&S affiliates and correspondent associates is that each is primarily concerned with the performance of his own unit, for it is on this basis that his own achievement, and thus his level of responsibility and compensation, ultimately will be determined. Standards of performance are, in all cases, set by the branch supervision department of the C&S National Bank: the president of the affiliates and correspondent associates, because of their **[122]** additional responsibilities, also report budgeting items to the C&S National Comptroller's Department.

There is, in fact, no essential difference in the manner in which the C&S approach to management is applied to its branches and to its correspondent associate banks. Employees of the latter regard themselves as C&S employees, and most of

the senior management have had previous experience with other C&S banks, particularly the C&S National Bank.*

Meanwhile, senior officers of C&S periodically attend directors meetings of the correspondent associate banks as advisors.** For management, the correspondent associates are fully dependent upon the C&S organization, while directors of these banks are satisfied to rely on the C&S management and operating support as long as it produces results. In the area of operations, the correspondent associates are totally dependent upon the C&S organization. In addition to providing management, performance evaluation, credit information and review, and general advisory services, there are a number of other functions that receive internal support. Many of these are listed **[123]** in Exhibit 69: centralized payroll accounting, purchasing, and personnel services, a single employee benefit plan, and so on. Internal data processing services are completely centralized. Also important is that the C&S relationship is itself a significant incentive to management, providing more opportunities to obtain diversified experience and promotion than would be possible in an individual small bank.

Because the correspondent associates are managed as C&S banks, they are identified as such in the minds of customers. Most of their customers look at these banks as C&S branches through which to avail themselves of the advantages of the entire C&S organization. Interview evidence supports the findings of the questionnaire survey with regard to the importance to many customers of using several C&S offices. Several customers were interviewed who had changed their business location and yet maintained older C&S banking relationships; they

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* See Answers of defendants to plaintiffs' interrogatory No. 8, June 16, 1972.

** Answers of defendants to plaintiffs' interrogatory No. 9, June 16, 1972.

nonetheless made use of C&S correspondent associate offices near their present business location. Larger banking customers view the C&S relationship with the correspondent associates as particularly important, if not critical, in meeting their banking needs. Customers feel that they can call upon the total resources of the C&S organization at any of the correspondent associate banks.

[124] Repeatedly emphasized in these interviews was the importance of direct availability of specialized services and the efficiency with which overline loans could be arranged as a consequence of the relationship between C&S National and the correspondent associate banks. At C&S Park National, for example, services such as lock box, freight bill payments and payroll processing are important to some customers, while at the C&S Bank of Chamblee, assistance in real estate lending was cited. The importance of these specialized services to some customers is, of course, supported by the findings of the questionnaire survey.

The importance of convenient arrangement of overline loans is evidenced from data on loan-deposit ratios and loan participations, as shown in Exhibit 70. Notice, for example, that the C&S South DeKalb Bank is responsible for a loan volume that is in excess of its deposit base due to the very heavy demand for installment loans in its service area. In general, the arrangement of loan participations is a regular part of C&S activity. Because of management involvement and responsibility, loan participations within the C&S organization are a very different matter than participations involving outside correspondent banks. This distinction is particularly important when an intimate knowledge of the customer's business is required and when customers requiring rapid loan commitments are involved.

[125] Because of all of these factors, correspondent associates present the image of a C&S bank. Coupled with this management attitude and ability to meet the community's needs with

the backup of the C&S organization is the common identification through the C&S logo. Most customers cannot recognize a distinction between the correspondent associates and any branches of C&S National. Though larger customers may be aware of the legal distinction, it is in no sense apparent to them operationally. Yet, these observations are entirely consistent with the fact that many customers view the correspondent associates as independent entities. As with branches of C&S National in local communities, these banks identify with the areas that they serve in their approach to local customer banking requirements.

As a consequence of the needs of the local service areas, and in line with the C&S style of banking, the correspondent associates pursue policies which vary significantly from one another. One example is the Saturday hours maintained by the C&S North Fulton and South DeKalb Banks, which were instituted in order to meet particular banking needs within those communities. Another example is banking hours during the week: the North Fulton, Sandy Springs, Chamblee, and Tucker Banks remain open until 6:00 p.m. on Fridays while the Park National and South DeKalb Banks close at 4:00 p.m.; the Tucker Bank opens its drive-in window at 8:30 a.m. while the other corres- **[126]** pondent associates open at 9:00 a.m.* A third example is provided by bids for public funds deposits. In one case of state funds placed by the fiscal division of the Georgia Department of Administrative Services (May 23, 1972), the C&S Bank of Tucker was the only successful bidder among the C&S banks. More generally, while there are numerous examples of variations in stated rates, service charges and fees, these can only scratch the surface of the variations which arise in granting loans and in negotiable interest rates.** This does occasionally

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* Answer of defendants to plaintiffs' interrogatory No. 19, June 16, 1972.

** A number of examples of differences in stated charges, rates, and fees may be found in the Answer of Defendants to Plaintiffs' Interrogatory No. 11, June 16, 1972.

result in two different C&S offices competing with one another for a particular account, but in this regard there appears to be no difference between the correspondent associates and branches of C&S National.

Based on the foregoing, the following conclusions emerge. The correspondent associates are managed as C&S banks and are therefore viewed as such by their competitors and customers. The fact that they are able to offer the full range of C&S banking services in their local communities is very important to them in attracting their customers. C&S banking, in fact, has been characteristically competi- **[127]** tive and innovative. One innovation was the ability to serve customers in suburban areas through the establishment of correspondent associate banks. In this regard, the operating support provided by C&S is of critical importance to the ability of the correspondent associates to serve their customers adequately. Their customers are typical of a growing majority of suburban banking customers who can be served satisfactorily only by means of metropolitan-wide branch banking institutions. The C&S relationship, however, still involves independence in banking decisions among the correspondent associates, recognizing that they can serve different communities with different banking needs if decisions are made by officers on the scene whose responsibility is to serve their individual communities. Finally, it is clear that the integral relationship between the C&S correspondent associate banks and the C&S organization involves much more than simply that between correspondent banks. Basically, a bank provides correspondent services to another bank only on its request—it does not initiate these services, as C&S in fact does with respect to its affiliates and correspondent associates, nor is there any integration of the services of the banks involved. Similarly, a bank does not provide management to its correspondents, nor is there any integration of management as in the case of C&S.

[128] B. **The Experience in Savannah, Augusta and Belvedere**

The proposed mergers of the correspondent associate banks

in the Atlanta area are not without precedent. As mentioned in Section II of this report, C&S National merged with suburban correspondent associates in Chatham County outside Savannah and in Richmond County outside Augusta in 1971. Similarly, the C&S Belvedere Bank was merged with the C&S DeKalb Bank in 1969, a merger made possible by a redefinition of the municipal boundaries of Avondale Estates. These previous mergers provide good case studies for assessing the impact of the present merger proposals on competition and on the manner in which the convenience and needs of the banking public is served. Interviews in Augusta, Savannah, and in the Belvedere section of DeKalb County confirm the conclusions discussed above. The correspondent associates previously located in these areas were always managed as C&S banks and hence were viewed as branches by their customers. These mergers were largely unnoticed by customers and competitors of these banks. Many customers had scarcely been conscious of the fact that these correspondent associates were anything other than C&S branches. Nevertheless, some larger customers, to whom bank management is important, did notice faster deposit posting as a consequence of these mergers and the elimination of the transmittal process permitted thereby. Also recognized was the ability of **[129]** the merged banks to arrange larger loans somewhat more expeditiously. Because of the previous relationships of these banks with C&S, no change was noticed in the degree of competition as a consequence of the mergers. Parenthetically, it might be added, customers and competitors in the service areas of these Savannah, Augusta and Belvedere banks indicated that in their judgment, these banking markets were highly competitive both before and after the mergers.

Because the correspondent associate banks are already well integrated into the C&S system, substantial cost savings cannot be expected to result from the proposed merger. Nevertheless, there will be some reductions in operating costs which could result ultimately in lower banking costs or better services to

customers. An analysis of expenses of the Richmond and Chatham County offices before and after the Augusta and Savannah mergers suggests some cost savings. Changes in accounting procedures, however, result in many comparisons being of doubtful validity. Two areas in which direct comparisons are possible are with respect to director's fees and bank examinations, both of which are eliminated by the merger (resulting in savings of $2,250 per year by the Chatham County office and $3,100 by the Richmond County office). Some savings are also believed to have occurred for salaries and related expenses and for data processing, but exact amounts of these savings cannot be mea- **[130]** sured because of the changed accounting procedures.

In any event, the basic conclusion to be drawn from previous experience is clear: no diminution in competition or in the ability to serve their communities was apparent after the mergers of the C&S correspondent associate banks in Chatham County, in Richmond County, and in the Belvedere area of DeKalb County. The mergers were merely a change of corporate form rather than of competitive substance.

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[139] VII. General Conclusions

This report has presented the findings of an economic analysis of the competitive impact of the relationships among the defendant banks and of the proposed mergers. It has addressed this issue in light of the convenience and needs of banking customers in the Atlanta metropolitan area. This analysis has included an examination of banking patterns in metropolitan areas, the rational basis of these patterns in terms of the convenience and needs of metropolitan area banking customers, and the resulting implications for competition, actual and potential, in commercial banking in the suburban areas around Atlanta. It has involved a statistical examination of the structural charac-

teristics of metropolitan area banking, a detailed study of the geographic origins of commercial bank accounts in the Atlanta area, an extensive questionnaire survey of banking customers in the Atlanta suburbs, and numerous interviews with bankers and bank customers in and around Atlanta, Augusta and Savannah.

The findings of this study provide no basis for the Justice Department allegations that competition has been or will be lessened by the past and present relationships among the defendants or by consummation of the proposed mergers. On the contrary, the conclusion emerges that the past relationships among the C&S banks have, in fact, promoted competition in these banking markets and have brought better and more convenient banking **[140]** services to customers in these markets. Prevention of the proposed mergers would have detrimental effects both on competition and upon the effectiveness with which customer banking requirements are met.

The management and operation of the C&S affiliates and correspondent associates in Fulton and DeKalb Counties have been predicated upon an integral relationship with the C&S organization since the initial C&S involvement. Further investigation indicates that these banks are identified by customers and competing bankers with C&S, and generally are viewed as if they are branches of the C&S National Bank. They function within the C&S system much as branches; they meet customer needs by providing multiple office locations to serve customers conveniently.

Examination of the structure of banking in the Atlanta metropolitan area leads to the conclusion that in comparison with similar metropolitan areas, commercial banking in Atlanta is neither concentrated nor is it trending that way. For example, in metropolitan areas in limited-area branching states, the average share of deposits held by the largest banking organization in mid-1970 was 36.6 percent; C&S, with all of its affiliates and correspondent associates in the metropolitan Atlanta area in-

cluded, held 29.8 percent. Moreover, the C&S share as measured by number of accounts has consistently been far less than this. The C&S National Bank, for example, held 23.6 percent of total metropolitan area deposits in mid-1970, but only 17.2 percent of the total number of deposit accounts.

[141] Furthermore, the proposed mergers would have only a minimal effect on banking concentration in the Atlanta metropolitan area, involving an increase of only 1.7 percent of total deposits. In reality, however, the mergers would be merely a formalization of existing relationships; thus, this small increase in concentration would have no competitive significance.

Additional measures of banking structure have indicated that banking in the Atlanta area is highly competitive, that the intensity of this competition is increasing, and that customers are well served in terms of the number of convenient and competing alternatives. Between the beginning of 1971 and mid-1972, for example, sixteen new banking offices have opened in DeKalb County and suburban Fulton County.

The analysis of banking structure in the Atlanta area also suggested that the major Atlanta banks are becoming increasingly important factors in suburban Fulton and DeKalb Counties. From the end of 1970 to mid-1971, the number of branches of these banks in these suburbs increased from four to thirty, accounting for some 40 percent of all banking offices in that area. This, in turn, indicates the emergence of a banking structure that is characteristic of metropolitan areas in which branching by commercial banks is permitted. For several reasons, this is, in fact, the rational structure for banking to assume within a complex economic environment. **[142]** Specifically, most suburban customers require facilities at multiple locations at which they can conduct banking business; many, too, require convenient suburban access to the credit resources and the specialized services and expertise that can be provided only by a major metropolitan bank. More generally, such a structure

typically brings to suburban customers a larger number of banking facilities and a larger number of competitive alternatives, and tends to result in a better allocation of credit as individual offices have more flexibility in responding to local borrowing requirements. It is within such an environment that C&S was the first Atlanta organization to respond to suburban banking needs by establishing banks consistent with the limitations of state law. This response, in turn, is reflected in the widespread view among bank customers and other bankers that C&S is the most competitive and innovative of the Atlanta banking organizations.

Initially it may appear that a relatively broad metropolitan banking market definition should be taken as the relevant geographic area in assessing the effects of the proposed mergers. While it is indeed a broad area that seems most relevant to the convenience and needs issues of this case, such areas can at best be relevant only to a very few customers. Suburban banking markets are, in fact, highly localized, and this fact is supported by extensive data on the origins of suburban customer accounts by ZIP-code address. Typically, both the suburban C&S banks and the **[143]** suburban branch offices of the major Atlanta banks draw the bulk of their accounts from only a few ZIP-code areas. Furthermore, the market areas of the suburban independent banks are observed to be even more geographically confined than those of the offices of the major organizations.

Postal ZIP-code data on origins of accounts can provide only a preliminary indication of bank market areas and the existing degree of market overlap. While these data indicate strongly the overwhelming significance of proximity in determining where people do their banking, postal ZIP-code areas coincide very poorly with any reasonable concept of geographic banking markets. Thus, in order to test for overlap among the markets of the suburban C&S banks, a detailed analysis was undertaken of the origins of their accounts by street address. It has been concluded from this analysis that no significant degree of market overlap exists among any of these banks. There is, therefore, no market

area in which the potential for competition has ever existed given the present locations of the correspondent associates.

The analysis of market areas has revealed, nevertheless, that there are a number of accounts of these banks that originate, or at least appear to originate, from outside of their service areas. It has been found, however, that these accounts, which are widely dispersed around and beyond the Atlanta metropolitan area, do not represent any form of market overlap and have, in fact, no competitive significance. Rather, they have their **[144]** source in the complementary relationships among the C&S banks in this metropolitan area and in the banking requirements which this complementarity enables them to meet. Should the relationship of the C&S correspondent associate banks to one another and to the other C&S banks in the area cease, these accounts would tend to evaporate and the market areas of these banks would tend to become even more confined geographically than at the present time. Such accounts thus represent no potential for competition among any of the defendant banks.

Because each of the correspondent associates serves a separate suburban market, their association with C&S cannot have served to lessen competition or otherwise to restrain trade. Moreover, each bank operates with independent decision-making authority. The role of the C&S organization is rather to provide the management and support required to serve each community with maximum effectiveness.

A final issue of potential competition is the competitive posture of the C&S correspondent associates should they be required to sever their relationship with the C&S organization. Just as it has been found that the C&S relationship has allowed them to provide better services for the great majority of suburban customers, severance of the C&S relationship would deprive them of this ability. This indicates that a substantial attrition of their customer base, with no effective means of attracting other customers, would occur. In turn, particularly in

light of the fact that these banks have **[145]** no experience as independents, these banks would be of substantially diminished importance as competitive factors in their suburban markets.

The conclusions regarding the competitive issues of this case may thus be summarized briefly:

— First, commercial banking in the Atlanta area is now vigorously competitive, and C&S is an innovative and competitive banking organization.

— Second, by simply formalizing past relationships among the defendant banks, the proposed mergers, which the Department of Justice seeks to enjoin, can in no event result in a lessening of competition.

— Third, each of the defendant banks serves its own separate market area, and thus there is no market overlap in which the potential for competition could have been eliminated or in which it could be created by prevention of the mergers.

— Fourth, the customer base and the competitive posture of the suburban C&S banks have been predicated upon the complementary relationship of the C&S banking system and upon the particular banking requirements of metropolitan area customers that can be served only by means of such a relationship.

— Fifth, the means by which these banks compete within their local markets are determined by each bank individually and separately.

— Sixth, the C&S correspondent associate banks could no longer serve the banking needs of the substantial and growing majority of suburban bank customers if their relationship to C&S were terminated. Should this occur, as it must if the proposed mergers are enjoined, these banks could no longer be positive competitive factors in suburban Atlanta.

[146] The issues of the convenience and needs of banking customers in this case are closely related to the competitive issues. Indeed, it is apparent that the competitive issues themselves arise from the past efforts of C&S to better meet the banking requirements of suburban banking customers. The mergers themselves would merely formalize what C&S has already accomplished. Prevention of the mergers, however, would deprive many customers of the convenience with which their banking requirements are now served.

The great majority of suburban banking customers require different points of access to their accounts. Indeed, of all personal customers now banking with C&S, over 80 percent now use two or more C&S banks for personal banking transactions, as do about half of all business customers for their business accounts. Furthermore, about 25 percent of the business customers of these banks require the specialized services and expertise and the large credit resources that must ultimately be provided by a major bank such as the main office of the C&S National Bank. Consequently, the overwhelming majority of the customers of the C&S suburban banks have been better served by virtue of the complementary C&S relationship.

Through meeting the convenience and needs of suburban customers, the C&S correspondent associates have acted to enhance banking competition in the Atlanta area. Prevention of these mergers and eliminating C&S **[147]** management from these banks would substantially inconvenience the majority of their customers and would, in turn, be detrimental to banking competition in these markets.

ECONOMIC REPORT VOLUME 2

Exhibit 20

Population Trends in the Atlanta SMSA, 1950-1970

	Number of Persons			Percentage Increases	
	1950	**1960**	**1970**	**1950-1960**	**1960-1970**
City of Atlanta	437,785	487,455	496,973	11.3	2.0
Fulton County, excluding Atlanta part	73,322	110,203	157,306	50.3	42.7
DeKalb County, excluding Atlanta part	98,860	215,450	368,700	117.9	71.1
Clayton County	22,872	46,365	98,043	102.7	111.5
Cobb County	61,830	114,174	196,793	84.7	72.4
Gwinnett County	32,320	43,541	72,349	34.7	66.2
Total Atlanta SMSA	726,989	1,017,188	1,390,164	39.9	36.7

Source: U.S. Census of Population, 1950, 1960, 1970

Exhibit 28

Demand Deposit Transfers Accepted by C&S Correspondent Associate Banks on Accounts Held at C&S National Bank, Affiliates, and Other Correspondent Associates in the Atlanta Metropolitan Area*

	Chamblee	North Fulton	Park National	Sandy Springs	South DeKalb	Tucker	Total
Total Deposits/Transfers							
Number	4,246	629	1,811	2,963	1,215	4,283	15,147
Amount	$2,720,771	$468,476	$3,011,180	$2,130,612	$596,840	$3,899,277	$12,827,156
National Banks Account Transfers							
Number	389	31	228	206	136	270	1,260
Percentage	9.2	4.9	12.6	6.9	11.2	6.3	8.3
Amount	$ 585,139	$ 51,510	$1,360,729	$ 234,609	$ 67,040	$ 448,201	$ 2,747,228
Percentage	21.5	11.0	45.2	11.0	11.2	11.5	21.2
Affiliate & Correspondent Associate Account Transfers							
Number	161	18	98	69	46	199	591
Percentage	3.8	2.9	5.4	2.3	3.8	4.6	3.9
Amount	$ 100,144	$ 4,882	$ 74,625	$91,918	$ 18,606	$ 586,322	$ 876,497
Percentage	3.7	1.0	2.5	4.3	3.1	15.0	6.8
Combined Transfers as Percent of Total							
Number	13.0	7.8	18.0	9.2	15.0	10.9	12.2
Amount	25.2	12.0	47.7	15.3	14.3	26.5	28.0

* All figures are the averages of transfers made in four days: Friday, July 7; Monday, July 10; Friday, July 14; and Monday, July 17, 1972.

Source: Citizens and Southern National Bank.

Exhibit 29

Checks Cashed at C&S Correspondent Associate Banks in North Fulton and DeKalb County
On Demand Deposit Accounts at Other C&S Banks in the Atlanta Area*
Daily Totals

Bank	Date Surveyed	Checks Cashed on C&S National Accounts		Checks Cashed on Accounts at Affiliates and Correspondent Associates		Total, Other C&S Banks	
		Number	Amount	Number	Amount	Number	Amount
C&S Chamblee	7/28/72	198	$ 20,804	79	$ 5,929	277	$ 26,733
	7/31/72	187	28,678	74	6,213	261	34,991
C&S Park National	7/28/72	140	12,264	56	4,980	196	17,244
	7/31/72	152	16,983	62	4,010	214	20,993
C&S North Fulton	7/28/72	31	7,500	30	5,392	61	12,892
(Sat.)	7/29/72	86	10,858	63	9,750	149	20,608
	7/31/72	40	6,402	37	3,711	77	10,113
C&S Sandy Springs	7/28/72	196	123,794	65	13,353	261	137,140
	7/31/72	366	229,904	122	24,799	488	254,700
C&S Tucker	7/28/72					841	140,766
	7/31/72					610	74,999

* These data were obtained by counts taken at their stations. One of the correspondent associate banks (C&S South DeKalb) was unable to complete the survey, and C&S Tucker was able to obtain totals only. C&S North Fulton maintains Saturday hours, thus a count was also made for that day. Counts of all checks cashed on these banks were not possible.

Exhibit 53

Transactions Conducted at Other C&S Banking Offices in the Atlanta Area
Personal Accounts—All Respondents

Percentages of All Respondents Answering

Customers of Bank/Branch	None	Instant Banker	Drive-In Banking	Check Cashing	Deposits to Checking Account	Withdrawals from Savings	Deposits to Savings	Loan Payments	Financial Advice	Other
North Fulton	21.9	8.6	45.7	57.6	47.5	8.6	11.5	16.2	8.3	4.3
Sandy Springs	19.7	7.3	50.3	65.3	60.2	14.0	15.9	14.0	8.9	9.6
Chamblee	30.4	6.4	43.8	54.8	49.1	8.8	13.4	11.0	5.7	4.6
Tucker	29.2	6.2	40.7	55.3	44.4	9.3	12.7	13.4	6.2	6.5
Park National	19.1	9.4	48.5	65.2	59.9	11.7	15.1	20.4	6.6	5.4
South DeKalb	19.9	11.2	45.4	59.0	59.8	12.7	12.4	17.1	6.4	2.8
Emory	23.4	10.0	45.3	62.0	62.3	12.8	14.0	12.5	5.2	5.8
East Point	13.8	13.8	56.4	77.7	68.0	18.1	26.6	16.0	5.3	8.5
DeKalb	20.7	9.5	49.6	62.4	57.4	10.3	14.5	20.7	8.3	3.7
Total Banks	22.8	8.7	46.5	60.9	55.5	11.4	14.2	15.5	6.9	5.6
Roswell Wieuca	8.1	11.1	67.2	80.8	79.7	20.1	24.7	20.3	7.7	11.8
Northside Parkway	11.4	8.1	69.1	73.2	73.8	14.1	15.4	14.8	4.0	6.7
Peachtree-Lenox	7.3	12.2	68.3	78.2	43.6	20.5	24.1	20.1	7.6	6.9
Moreland	10.8	8.1	46.2	60.4	73.1	18.8	25.4	17.7	6.5	5.8
South Moreland	10.3	13.4	62.1	69.0	82.0	21.5	26.8	25.3	5.0	5.4
Main	9.7	12.1	51.4	67.9	69.7	19.7	22.4	17.6	10.3	6.9
Total Branches	9.4	11.1	60.1	71.6	69.4	19.6	23.7	19.6	7.2	7.3
All Banks and Branches	17.8	9.6	51.8	65.1	60.9	14.6	17.9	17.1	7.0	6.3

Exhibit 54

Transactions Conducted at Other C&S Banking Offices in the Atlanta Area
Personal Accounts—Banking Where Now Live Not Important
Percentages of All Respondents Answering

Customers of Bank/Branch	None	Instant Banker	Drive-In Banking	Check Cashing	Deposits to Checking Account	Withdrawals from Savings	Deposits to Savings	Loan Payments	Financial Advice	Other
North Fulton	13.4	6.3	50.0	59.8	54.5	9.8	15.2	19.6	13.4	2.7
Sandy Springs	14.2	10.0	51.7	69.2	62.5	12.5	11.7	14.2	11.7	7.5
Chamblee	22.7	6.2	47.4	59.8	57.7	12.4	22.7	13.4	7.2	6.2
Tucker	21.1	6.3	46.3	59.0	49.5	8.4	11.6	17.9	6.3	6.3
Park National	18.0	8.7	47.7	68.2	59.0	11.8	13.9	28.2	6.2	5.1
South DeKalb	16.7	10.7	52.4	63.1	59.5	8.3	9.5	23.8	9.5	2.4
Emory	20.7	8.2	46.7	63.7	65.2	14.1	12.6	12.6	3.7	3.7
East Point	11.1	11.1	59.3	74.1	77.8	25.9	33.3	18.5	7.4	-0-
DeKalb	21.0	8.0	53.0	62.0	60.0	11.0	18.0	22.0	8.0	2.0
Total Banks	18.1	8.2	49.4	64.0	59.4	11.7	14.8	19.5	8.0	4.5
Roswell Wieuca	8.5	13.9	64.6	80.0	77.7	19.3	21.5	23.1	7.7	10.0
Northside Parkway	10.2	10.2	76.3	78.0	79.7	16.9	20.3	23.7	6.8	8.5
Peachtree-Lenox	8.2	12.0	68.4	75.3	69.6	15.8	18.4	18.4	7.0	4.4
Moreland	12.0	9.3	45.3	57.3	70.7	17.3	22.0	19.3	6.7	6.0
South Moreland	9.4	15.9	59.8	68.2	84.1	20.6	28.0	29.0	6.5	4.7
Main	11.4	12.8	45.5	70.6	61.6	19.0	19.4	16.6	9.5	6.2
Total Branches	10.1	12.4	57.1	70.8	71.7	18.2	21.2	20.6	7.6	6.4
All Banks and Branches	14.4	10.1	52.9	67.1	65.0	14.7	17.8	20.5	7.8	5.3

Exhibit 55

Transactions Conducted at Other C&S Banking Offices in the Atlanta Area
Personal Accounts—Summary

Percentages of All Respondents Answering

Customers of Bank / Branch	None	Instant Banker	Drive-In Banking	Check Cashing	Deposits to Checking Account	With-drawals from Savings	Deposits to Savings	Loan Payments	Financial Advice	Other
All Respondents:										
Banks	22.8	8.7	46.5	60.9	55.5	11.4	14.2	15.5	6.9	5.6
Branches	9.4	11.1	60.1	71.6	69.4	19.6	23.7	19.6	7.2	7.3
Total	17.8	9.6	51.8	65.1	60.9	14.6	17.9	17.1	7.0	6.3
Banking Where Now Live Not Important:										
Banks	18.1	8.2	49.4	64.0	59.4	11.7	14.8	19.5	8.0	4.5
Branches	10.1	12.4	57.1	70.8	71.7	18.2	21.2	20.6	7.6	6.4
Total	14.4	10.1	52.9	67.1	65.0	14.7	17.8	20.8	7.8	5.3

Exhibit 69

Services Supplied by the C&S National Bank to Its Correspondent Associate Banks but Generally Not Available to Other Correspondents

Assistance in Establishing Banks

Assistance in Sale of Stock

Assistance in Selection of Directors

Provision of Managerial and Staff Personnel on Permanent Basis

Management Performance Review

Credit Review

More Rapid Arrangement of Loan Participations

More Direct Provision of Specialized Banking Services

Management Training

Advisory Directors

C&S System Advertising

Common Payroll and Employee Benefit System

Centralized Purchasing

Centralized Security Alert System

Employee Publications

C&S Bank Club Privileges for Employees

Source: C&S National Bank